

United States
Circuit Court of Appeals

For the Ninth Circuit. 2

Transcript of Record.
(IN TWO VOLUMES.)

THE UNITED STATES OF AMERICA,

vs. Appellant,

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Appellees.

VOLUME II.

(Pages 417 to 785, Inclusive)

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Upon Appeal from the United States District Court for the Southern District of California, Southern Division. CLERK

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Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

(Testimony of Roy Jones.)

the 3,192 issued before but not taken. Certificate No. 20 to M. Z. Elliott for 596; certificate No. 21 to M. Z. Elliott for 596 shares; certificate No. 22 to A. H. Butler & Company for 1,000 shares; certificate No. 23 to A. H. Butler & Company, 2,000 shares. Now, these are all dated March 16, to A. H. Butler. And certificate No. 24, under March 16th, for 990 shares to A. H. Butler & Company; certificate No. 25 to F. J. Haldeman for 192 shares.

Mr. WEIL.—Will you stop when you come down to the total original issue?

A. I think that is the total original issue, right there. That is all in 1910, and then there are no further changes until 1911. I think that covers all the stock of the company up to that time.

The COURT.—When was the capital stock increased? A. It was decreased.

Mr. HALL.—I was going to ask him about that.

A. Isn't it a fact that the capital stock of the corporation was decreased on February 8, 1910?

A. I think that is the date.

The COURT.—Decreased or increased?

Mr. HALL.—Decreased, reduced to \$100,000.

A. Yes.

The COURT.—The meeting on the 1st of February, 1908, at which there was 50 shares represented, was that all the capital stock?

Mr. HALL.—No, the capital stock was \$1,250,000, but there were only 50 shares issued. The rest of it remained in the treasury and unissued. I may be mistaken about that, Mr. Jones, [342] and if I am

(Testimony of Roy Jones.)

I want you to correct me. I only have such knowledge as I have been able to gather in regard to the history of this corporation.

The COURT.—The original stock was what?

Mr. HALL.—\$1,250,000.

Mr. PRINGLE.—Of which there were 50 shares issued.

Mr. HALL.—Fifty shares issued.

The COURT.—You mean 1,250,000 shares?

Mr. HALL.—No, the capital stock was \$1,250,000.

The COURT.—Dollars, and not shares. How was it divided?

Mr. HALL.—Divided into shares of \$5 par value.

The WITNESS.—Here is the original stock certificate, your Honor (indicating).

The COURT.—I will get all I want here.

Mr. HALL.—And our examination of the records of the county clerk of Los Angeles County disclosed that the capital stock was reduced on February 8, 1910, to \$100,000; and at the time of that, M. Z. Elliott was president, Frank R. Strong secretary, and the directors were Elliott, Strong, McDonald, Jones and Dorsey; and the statement made at that time in this reduction of capital stock proceedings shows that the capital stock was divided as follows, on February 8, 1910: John P. Jones, by Roy Jones, attorney-in-fact, 39,990 shares—

The WITNESS.—That can't be possible.

Mr. HALL.—(Continuing.) Roy Jones, 10 shares; M. Z. Elliott, 40,000 shares; Stephen W. Dorsey, 40,000 shares; George W. Dickinson, 13,333 shares;

(Testimony of Roy Jones.)

William Z. McDonald, 40,000 shares; L. W. Andrews, 13,333 shares; A. H. Butler, 50,000 shares; Frank R. Strong, 13,334 shares.

Q. Do you know anything about those proceedings? [343]

A. I remember there were such proceedings.

Q. Well, do you have any record of your company showing the reduction of the stock at that time?

A. I think it was in the minutes; I am not sure.

Q. Well, have you any stock book or stock ledger or stock journal which shows that the various people were holding the capital stock of the British-American Oil Company on February 8, 1910, in the proportions which I have just read to you?

A. No stock was ever actually issued at all.

Q. Well, how was it held? Was it held in the treasury for the benefit of these individuals?

A. It was simply delayed, I think the idea being that they wanted rather to pool the stock; they did not want any dealing in the stock, and they simply delayed doing it until they did get the reduction. It was more neglect, I think, than anything else.

Q. Now, you have no minutes of any meeting with respect to that, have you?

A. With respect to what?

Q. With respect to pooling the stock and not issuing it, A. No.

Mr. PRINGLE.—That was not a corporate act.

Q. (By Mr. HALL.) Now, will you tell me in what proportion, or what interest was held by Dorsey, Strong, Dickinson—by Roy Jones, John P.

(Testimony of Roy Jones.)

Jones, by his attorney in fact Roy Jones, M. Z. Elliott, Stephen W. Dorsey, George W. Dickinson, William Z. McDonald, L. W. Andrews, A. H. Butler, and Frank R. Strong of the capital stock of the British-American Oil Company on January 1st, 1908?

Mr. WEIL.—Now, I object to that on the ground it does [344] not appear that these parties were interested as early as January 1st, 1908. You are assuming a fact not in evidence.

Mr. HALL.—I want to just change it to conform to the gentleman's objection.

Mr. WEIL.—Let him explain.

Mr. HALL.—And make that, what proportionate part each one of these men I have named held in the capital stock of the British-American Oil Company at the time when they first all became interested in the British-American Oil Company.

Mr. PRINGLE.—Now, that is Elliott—

Mr. WEIL.—Let him explain the situation. Do you understand that question, Mr. Jones?

A. I think I do.

Mr. WEIL.—He wants you to explain the whole situation; that is what he is after.

A. I think I understand you. You want to know—you said first as of January 1st, 1908. You don't mean that, do you?

Mr. HALL.—I have obliterated that date. Leave that out of your mind, and take it up as the date on which all of you whose names I have read became interested in the corporation. Give me the proportion which each one then held.

(Testimony of Roy Jones.)

A. Well, of my own and my father's, that we were holding together, that is, our group was holding—

Q. Now, let's get that, because I want to ask you some questions.

A. The whole ownership was divided into separate groups of men.

Q. All right, tell me the groups?

A. One group consisted of myself and my father; another group consisted of Mr. A. H. Butler and his family, I think [345] his wife and son; another group, known as the Dorsey group, consisted of Senator Dorsey and Mrs. Dorsey and Mr. Haldeman.

Q. And Mr. who? A. Haldeman.

Q. All right.

A. Another group consisted of Mr. Elliott and his partner, whom I afterwards learned to be Mr. Davis.

Q. All right.

A. Another group consisted of Mr. Strong, Mr. George Dickinson and Mr. L. W. Andrews.

The COURT.—That is in addition to whom?

A. That was known as the Strong group.

Q. Strong, Dickinson and Andrews?

A. Yes, Each one of those groups was represented by—

Mr. WEIL.—And McDonald.

Q. (By Mr. HALL.) Where does McDonald come in?

A. Oh, yes, I beg pardon. Dr. McDonald and his son, James McDonald.

Mr. PRINGLE.—That was another group?

(Testimony of Roy Jones.)

A. That was another group. In all the transactions each group was represented by the leader of the group.

Mr. HALL.—I see.

A. In the original transactions my father represented our group, although I soon came in actively after the first meetings. That was long before the locations, I came in. But Dr. McDonald always represented his group in the office, because his son was always in the field. The same was true of Mr. Butler; his son was in the field; in fact, Mr. Butler himself was away most of the time.

Q. You became familiar with the transactions prior to [346] the time the locations were made, did you not?

A. How do you mean, the transactions?

Q. Well, I mean the business of these various groups and the British-American Oil Company.

A. No.

I didn't know there was such a company as the British-American Oil Company prior to January 1, 1908, when these 207 mineral locations were made in Kern and Fresno Counties, California; I was not familiar with the affairs of that company. I first learned there was a corporation known as the British-American Oil Company towards the middle or end of January, 1908. I think Dr. McDonald told us, Dr. William Z. McDonald. He said he and a group of men with whom he had been associated had a corporation which had been organized, which had never been used. At that time we were discuss-

(Testimony of Roy Jones.)

ing forming a corporation of our own. Mr. Dorsey and Mr. Elliott, who were Arizona men, that is, who were operating a great deal in Arizona, were urging an Arizona corporation, a nonassessable corporation. Dr. McDonald suggested here was a corporation already at hand, with its seal and everything that was necessary, and he thought they could turn it over to us free of expense, and that rather interested us. The British-American corporation was turned over to us by McDonald and his associates free of expense. I think I at once became an officer of the British-American Oil Company, and familiar with the affairs of that company. I was one of the original five that took the directorate over from the old company. It was taken over February 3d, 1908. I did not at once familiarize myself with the affairs of the British-American Oil Company because it had no affairs up to that time. It had no property. We investigated that before we took it over. We found it had no liabilities [347] and no assets, else we would not have taken it. It had no funds in the treasury. It never had been used. There had never been a treasury established, it was lying dormant. My associates consisted of the Jones group, the Butler group, the Dorsey group, the Elliott group, the Strong group, and the William Z. McDonald group. After myself and my associates took over the British-American Oil Company there was no division of the stock of the corporation until 1910. As soon as we took it over, we commenced to

(Testimony of Roy Jones.)

have meetings and transact business of the corporation.

Q. In what proportion were each of these six groups represented in the handling of the transactions of business affairs of the British-American Oil Company from the time it was taken over in February, 1908, until the final issuance of stock certificates in February, 1910?

A. The Butler group got 20 per cent, and each of the other groups got 16 per cent, making a total of 100.

Q. What fact or facts, or circumstance or circumstances, determined the fact that the Butler group should have 20 per cent and each of the other so-called groups should have 16 per cent of the capital stock of the British-American Oil Company?

A. The Butler group got the 20 per cent principally because they demanded it, asked for it, and they asked for it because they had all the necessary information, the surveys and things of the land that made it possible to locate, and they brought it to our attention, really; it was through the Butlers that the whole proposition came to our attention.

Mr. A. H. Butler never called the proposition to my attention. I did not meet him until afterwards. He called it to the attention of some of the others. I think he talked with Dr. McDonald, who had been associated with him in some things. [348] The proposition was first of all submitted by Senator Dorsey to my father at his office. Father went up quite frequently to Senator Dorsey's office. They

(Testimony of Roy Jones.)

had been in the United States Senate together and knew one another very well. Father was getting to be an old man, nearly eighty years old, and he used to go in and loaf around Senator Dorsey's office more or less. These conferences between my father and Senator Dorsey occurred late in the fall of 1907. This proposition was first called to my attention when father talked to me about it when he came back and told me that he was negotiating these things, planning and talking about them, and I was very busy down at Santa Monica, and I did not go to some of the preliminary talks he had up there; I did not go up, as a matter of fact, until they really got to doing something. Shortly before the time for location they made the final plans. Oh, we got together a number of times, the different people who were going into the syndicate. We met and talked over ways and means and plans, and met a number of times during those months. The people who met and talked over these plans were usually Mr. Elliott, Mr. Strong, Senator Dorsey and Dr. McDonald, and I was there later, my father and I. Father was nearly always there, and I was there frequently. I think Mr. A. H. Butler was not there. I think he was away. There was no one at these meetings who was absolutely acting for Mr. Butler, but Mr. McDonald knew a good deal of the circumstances, and what Mr. Butler was willing to do, and they had been associated before. I think he was rather the spokesman for Mr. Butler. The plan that was formulated was that on the night of January 1st

(Testimony of Roy Jones.)

they would make those locations and make them all simultaneously. The lands were to be developed by the various associates that had gotten together. I mean Butler, [349] Senator Dorsey, M. Z. Elliott, Frank R. Strong and William Z. McDonald, and their associates. In some of the meetings I think Mr. Andrews was present—at one meeting, and I am not sure whether Mr. Dickinson was; he was usually represented by Mr. Strong. Mr. Andrews was in what was known as the Strong group. My father and I put up money for the locations, whether it was prior or afterwards to pay the bills, I don't remember. We put up several hundred dollars, I think nearly a thousand. I think Senator Dorsey put up \$500.00 if I am not mistaken. Mr. Butler didn't put up; that is, we loaned it. Somebody had to pay the bills, and we happened to have the money and we put it up. The understanding was that we would get it back. I don't think Elliott put up any money. Those three put up all the money that was advanced, and that was all that was necessary; that took care of the bills, that is all. My father, Dorsey and Strong put up the money.

Q. Now, how did Butler get his interest in it?

A. The interest had nothing to do with the money that was put up, because that was simply going to be given back to us. Butler got his interest largely because he put us next to the whole proposition. He was the man that we got our information from, that knew about the land and the boundaries.

(Testimony of Roy Jones.)

He had plats, maps, surveys and all sorts of thing. I think he had surveys of most of the lands up there. It was not Butler who designated the lands that should be located. I think the three oil men in our association were McDonald, Butler and Elliott. They were more or less oil expert men. Elliott got his interest by reason of his activities; and we all got together and decided to go into it together. He drew it to Dorsey's attention, and Dorsey brought it to our attention. McDonald [350] got his interest by reason of the fact that he was associated with Butler and brought it to the attention of some of those who brought it to our attention. At that time it was not known that Butler and William Z. McDonald were in possession of the British-American Oil Company. I first learned of the existence of the British-American Oil Company some time along about the middle or latter part of January, when we got together to talk over how we should handle the locations, now that we had them. Prior to the time of making the locations a number of different suggestions had been made as to how we would handle them.

Q. What had those suggestions been?

A. Well, first of all, it depended a little bit on how we were associated, how tight our association was; and we thought that we would go ahead—at first there was some talk about handling some of the land individually, and some talk about handling it as an association, and then we did talk about organizing an Arizona corporation.

(Testimony of Roy Jones.)

This talk didn't occur before the making of the locations, we didn't have time; that was rather rushed along at the end. I will tell you what brought about the transfer of the corporation to this association. Dr. McDonald, I think it was, when we were talking about organizing the Arizona corporation, said, "What is the use of going to that expense? We have got one that is not working, that I think we can get for you free of expense, as the fellows that are in it never used it and have no interest in it, and I think I can get it for you." And so we said, "Go ahead and see if you can."

My name was not used as a locator. Neither was my father's name used. Our names were not used because they had a theory at that time that the location notices ought to be [351] signed in person by the people whose names appeared on them, and I was not there to sign them and my father would not have taken the trouble to sign them. He was nearly 80 years old, and had writer's cramp, and signed with great difficulty, and so he would not have signed anyhow. I have forgotten where I was, but I was not available when they signed the notices, anyhow.

Q. Were there any of this list of locators I have read to you who acted for you or represented you as signers of these location notices?

A. Not as representing me personally, no sir.

Q. There were none of them there who were designated as your special agents? A. No.

Q. Nor were there any of them designated as

(Testimony of Roy Jones.)

special agents of your father in making these locations? A. No.

I don't know who got this man B. Adams to sign the location notices, I was not there. If I had been there I would have signed myself, if I had been available.

Q. Now, when you finally determined what per cent each one of these groups should have in the affairs of the corporation, who decided that question?

A. The interest of the groups, did I understand you?

Q. Yes.

A. Well, the groups—you see, the original ones that appeared in the proposition were six.

Mr. WEIL.—That is, the heads of the groups.

A. The heads of the groups. The original people that appeared in talking over the proposition were six different [352] people, and each one of those had their subsidiariés and their friends that wanted to come in on the group, but each one represented his own group in the conversation, and the subsidiaries seldom appeared. For instance, Mrs. Dorsey never appeared, naturally. And Mr. Andrews very seldom appeared, until afterwards, and Mr. Dickinson I think never appeared at the time. Mr. Strong came and represented him. And Mr. Butler's interest was decided, as I say. He said he would stand out and give us all these facilities, if we would let his group take in a fifth, that is 20 per cent for the group. And there were five other groups, and the understanding was that those groups could subdivide themselves as

(Testimony of Roy Jones.)

they pleased, but each group was to take a fifth of the remainder, you see.

Mr. WEIL.—A sixth.

A. No, a fifth of the remainder.

Mr. A. V. ANDREWS.—A fifth of the remaining four-fifths.

A. A fifth of the remaining four-fifths; that is, 16 per cent.

Q. (By Mr. HALL.) Was there any division of the stock of the British-American Oil Company based upon the number of locations made by the different individuals whose names appeared upon these 207 locations?

A. No.

Q. The number of locations had absolutely nothing to do whatever with the division of the British-American Oil Company stock? A. No.

Q. And did it ever have anything to do with the distribution of the funds or the property of the British-American Oil Company that you know of?
[353] A. No.

Q. That situation was absolutely ignored throughout the entire life of the corporation? A. Yes.

Q. Have you in your possession the original location notices which were laid upon these lands?

A. We had some of them here to-day; I brought them along at your request. They were here this morning. I think they are here, some of them.

Q. May I see those, and examine them? I may ask to put these in, or make a record up, showing that entire situation, without going to the extent of ex-

(Testimony of Roy Jones.)

tending all of them or getting certified copies.

A. At your request, I searched the papers at the attorney's office, but these were all I was able to lay hands on. There may be others, but I don't know where they are.

Mr. PRINGLE.—Mr. Hall, before I forget, with regard to Mrs. Haldeman, I suppose we will concede she would testify like her husband as to her motives and the circumstances under which she signed the notices, and so on. You didn't put her on the stand.

Mr. A. V. ANDREWS.—We assumed what he stated was correct.

Mr. HALL.—I assume we can let the record show that, your Honor. You may examine. I don't know that I will, but it may be possible that something will develop and I may want to recall this witness in regard to his records later on.

Cross-examination.

(By Mr. WEIL.)

My father is dead. Of the original group of six Senator Dorsey, Mrs. Dorsey, my father, Senator Jones, Mr. Elliott [354] Dr. McDonald and A. H. Butler have died. Mr. Strong is the only head of one of the original groups that is now alive. When these locations were contemplated it was agreed that all the locations should be on behalf of the association in which these various people have been interested, I have already indicated. This was to be done regardless of how many location notices each one signed. We paid no attention to the names on the locations. The whole scheme was planned for this

(Testimony of Roy Jones.)

association that I mentioned. The locators were all acting as the agents of the association whether they were members of the association or not. The fact that some of the members of the association happened to sign the location notices as agent for the association was mere circumstance. They were simply available. They were there, that was all. By "association" I mean these fourteen or fifteen people. This "association" I have referred to was not a corporation at that time. It did not become a corporation until the end of January—Well, I think in February when we took it over. I had never heard of the British-American Oil Company prior to January 1, 1908. I had no interest in it whatever prior to that time. I know that a great many of these locators were not acting on its behalf. I don't think anybody was. Nobody knew anything about it that I knew of. Dr. McDonald was one of the heads of a group who represented his group in the association. I always understood that he and his son Jim were in his group. Strong, George Dickinson and L. W. Andrews were in the Strong group. The Elliott group consisted of Elliott and his partner Dr. Davis. Mr. Haldeman has stated my understanding of who composed the Dorsey group. My father and myself composed the Jones group. Father and I were going half and half. That would give me 8 per cent, and he had 8 per cent of the entire holdings. My father as the head of a [355] group got sixteen per cent and half of that was mine. I always understood Mr.

(Testimony of Roy Jones.)

and Mrs. Butler and Albert Butler Jr. composed the Butler group.

Q. That would make about 15 or 16 people who were really interested in this association, would it?

A. I have not counted them; it is about that many.

When the conveyance was made to Strong and Elliott as trustees that conveyance did not change the interests of the various members of these groups as they were originally contemplated. Elliott and Strong were understood to hold that in trust for the benefit of the members of the association. A long while after Strong and Elliott conveyed this property to the British-American Oil Company the stock was issued by the British-American Oil Company to the heads of the groups as their interests were originally arranged for.

Q. Well, do I understand then when Strong and Elliott conveyed to this corporation, that the original members of the group at the time of this conveyance,—the original members of the association were entitled to stock interest at that time in the corporation in accordance with the interests that they had in the original association?

A. Yes; our understanding was, if I apprehend your question, that when the corporation was formed the Butler group would be entitled to 20 per cent of the stock and each of the other groups would be entitled to 16 per cent of the stock.

Q. And it was no particular concern to the corporation or the association how each head of a group

(Testimony of Roy Jones.)

divided his up amongst his members of his group; is that correct?

A. No, because before the stock was issued there was some trading back and forth, I think, on that.

[356]

When we took over the corporation the capital stock was \$1,250,000, divided into shares of \$5 each. That would be 250,000 shares. Subsequent to that time, and before the stock was actually issued, a proceeding was had whereby the capital stock was reduced.

Q. And as a matter of fact, until the stock was issued in 1910, which was after the capital stock was reduced, there were no stock certificates issued at all outside of the original 50 shares which were issued to qualify the directors.

A. Those were not even reissued.

Q. According to the record, as I see it there, the 10 shares of stock were apparently not issued to the original subscribers at the time they incorporated the company, and it was not issued until you people were ready to take it over; is that correct?

A. As I understood it, they had to issue the stock then in order to transfer it to us. It never had been used; they had never even qualified; they had never done anything about it. There was no stock issued then until we got it, and they issued it then to the original directors, who immediately endorsed it in blank.

Q. They immediately endorsed it in blank, and then the people who were interested in this associa-

(Testimony of Roy Jones.)

tion, in taking over the corporation, took these shares endorsed in blank and qualified themselves as directors? A. Yes.

Q. But they never reissued the stock to themselves, but they let it stand in the original names, endorsed in blank; is that correct? A. Yes. [357]

Q. And the corporate records stood that way, with only 50 shares issued, and that not in the name of the directors, until 1910? A. Yes.

Q. And in 1910 all the stock was issued in accordance with the original agreement? A. Yes.

Q. Except in so far as it had changed hands by dealings between the parties in the meantime?

A. Yes.

There was no arrangement or understanding of any kind whatsoever before the locations with the single exception as to the interests that each group was to have in the entire association. We decided that all the members would share equally, with the exception of the Butler group, which got a little more. Outside of that there was no understanding whatsoever or no discussion as to what disposition was to be made of the property or anything else; anything that transpired as to that took place after the locations. What these various groups were to get was an undivided interest in the whole; that was the original understanding.

Redirect Examination.

(By Mr. HALL.)

We had determined the amount of each interest prior to the making of the location. Each group was

(Testimony of Roy Jones.)

to have a fifth of four-fifths, with the exception of Mr. Butler's group, which had a straight fifth. That determination was arrived at prior to the time the locations were made.

Testimony of Henry L. Musser, for Plaintiff.

HENRY L. MUSSER, a witness called in behalf of the plaintiff, having first [358] been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Henry L. Musser. I reside in Los Angeles, I am a seed merchant. I have lived in Los Angeles 22 years. I was living here in the years 1907, '08 and '09. I presume I am the same Henry L. Musser whose name appears upon 184 location notices of the location of placer mining claims, which location notices are of record in Kern County, California. I suppose I signed the original notices. The record would have to show when I signed them. I haven't any idea of the time. I think we were in Senator Dorsey's office when I signed them. Mr. Haldeman, who is a very good friend of mine, requested me, in order to make tangible, some location lands—some oil lands, requested me to sign these location papers as they wanted to make these things tangible in order to make a transfer of these claims. Now let me get that thing right, if I can. About that time groups of men were locating oil claims in groups of eight, to take up 160 acres with the idea of developing one well that would prove up the 160 acres

(Testimony of Henry L. Musser.)

to conform with the law, and Mr. Haldeman requested me to assist him in fixing up these papers so that they could turn them over to a company who would develop these claims, and I understand I was just an instrument to conform with the law. I had no idea who the company were. I didn't hear the name of any corporation at that time that I know of, and I didn't have any recollection of any. I have no recollection of knowing who the persons were that were interested in this location. I don't believe I ever did know. I didn't talk to anyone outside of Mr. Haldeman in regard to making the locations. I consented to do what Mr. Haldeman asked me [359] to and when the location papers were ready I signed them and when the assignment papers were ready I signed them and dismissed them from my memory. I signed the location notice and the assignment papers because Mr. Haldeman asked me as a friend. I had no other purpose whatever than that. I did not know where the lands were located. I never visited them. I never invested any money in these lands either in the development or the expense of locating them. I didn't have any intention of so doing at the time I signed the location notices. I never claimed to have any interest in the lands covered by these location notices. Independently of what you have said to me here I don't know upon how many of these location notices my name appeared. I never made any inquiry to ascertain. I never made any inquiry to ascertain what became of the lands. I have never received anything of value

(Testimony of Henry L. Musser.)

by reason of having signed these location notices. I didn't expect to receive anything of value at the time I signed the location notices. I was not promised anything of value at that time. Of the men who were colocators with me on these lands I knew George C. Haldeman, Stephen W. Dorsey and Albert G. Shaw. I did not know Warren F. McGrath and George W. Dickinson. I had known Senator Dorsey ever since Mr. Haldeman was his secretary. I never discussed this matter with Senator Dorsey. I never discussed the matter with Mr. Shaw.

Q. The records of Kern County likewise disclose that these lands were conveyed by yourself and 21 others, the conveyance describing in all 207 locations upon which your name appeared as a locator of 184; on March 4, 1908,—I say yourself and the others according to this instrument,—conveyed all of these 207 locations to Frank R. Strong and M. Z. Elliott, designated in the instrument as trustees. Were you acquainted with Frank R. Strong and M. Z. Elliott?

A. No, sir.

Mr. Haldeman requested me to execute this deed. There was no consideration paid me for the [360] execution of this deed. I executed it out of friendship for Mr. Haldeman. I didn't expect to receive anything of value for executing it. I have no recollection of any declaration by Mr. Strong or Mr. Elliott, or by Mr. Haldeman for them, as to the trusteeship that was created or attempted to be created by this instrument. I made no inquiry as to why the lands were being conveyed to Strong and

(Testimony of Henry L. Musser.)

Elliott as trustees. I understood when I signed the location papers that a company was going to develop those lands. I was only an instrument to conform with the law and the regulations, as I supposed. I never heard of the conveyance of May 4, 1909, by Frank R. Strong and M. Z. Elliott as trustees of the 207 claims to the British-American Oil Company. I was not requested that I know of by Mr. Strong or Mr. Elliott to give my consent to the execution of that instrument. I did not receive anything of value by reason of the execution of that instrument. There was no declaration of trust made by either of these parties, verbally or written to me with respect to this transfer. I don't now claim any interest in any of these lands. I have never been a stockholder of the British-American Oil Company, the Dominion Oil Company, the Bankline Oil Company, or the General Petroleum Company or Corporation. I don't know Captain Barneson or Mr. Walker, who are defendants in this case. I never had any business or partnership relations with M. Z. Elliott, Senator Dorsey or with Mr. Haldeman.

Cross-examination.

(By Mr. WEIL.)

I didn't locate this land for my own benefit. I located it as an agent for somebody else at the request of Mr. Haldeman. I am clear as to what Mr. Haldeman said to me at the time he requested me to become a locator. It was to the [361] effect that I was to assist him to conform to the law to bring this into tangible shape, to bring these locations into

(Testimony of Henry L. Musser.)

tangible shape, that they had a buyer or company who would develop these lands.

Q. Now, the reason I asked you if your recollection is clear, could you swear at this time that Mr. Haldeman referred to a company, or an association, or a syndicate, or a corporation? Which did he say? Is your recollection distinct enough to swear at this time, after a lapse of ten years, what word he used?

A. No; I couldn't use the words, but I knew we were to put that into tangible shape—

Q. Never mind that part of it. Excuse me for interrupting you. The only part I want—you think he used the word that there was a company going to develop this. Are you positive that he might not have said association?

A. No; I cannot recall the exact wording. I can only give—

Q. He might have said—

Mr. HALL.—Wait just a minute.

Q. (By Mr. WEIL.) Or he might have said syndicate, might he?

A. He may have said syndicate.

Q. Or he might have said association, or he might have said company?

A. I admit he might have said either of those.

I had no intent of defrauding the Government in any way. I thought I was acting as agent on behalf of this association, or syndicate, or company or whatever he said.

Testimony of Gustavus A. Horn, for Plaintiff.

GUSTAVUS A. HORN, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination. [362]

(By Mr. HALL.)

My name is Gustavus A. Horn. I reside at 3621 McClintock Avenue, Los Angeles. I am an investigator. I have my own bureau. I am licensed by the state. I was residing in Los Angeles during the years 1907, '08 and '09. I am the G. A. Horn whose name appears upon 63 placer mining locations which are recorded in the records of Kern County, California. I signed one paper. If I remember right I think it was some kind of a conveyance. That is all I signed that I can remember of. In a way I know how my name came to appear upon these 63 location notices, in a way I do not. I was employed by McDonald and Stott as bookkeeper and I was requested to go to McKittrick in Kern County with a bunch of men, in that capacity. I was employed as a bookkeeper in the office. I was going up with the gang to keep track of their expenses and so forth. The firm was McDonald and Stott, composed of Dr. William Z. McDonald and a man named Stott. Stott was in the east somewhere.

I will give you the details about my name appearing upon these location notices. I had a conversation with Dr. McDonald December 26th and 27th, 1907. He told me one afternoon he wanted me to go to McKittrick with a gang of men, and they were

(Testimony of Gustavus A. Horn.)

to do some prospecting or locating claims, and so on, and I was to go up with the gang and his son and keep track of their expenditures and supplies that were used, and so forth; and I think it was the next day, if I remember right, I was up with the crowd, or part of the crowd, and met the rest of them at McKittrick. Doctor McDonald's son James went up with me, went up on the train. At McKittrick we were met by—we had, I think, 8 large automobiles that were hired for the purpose and [363] from there we went over the desert to the oil fields by machine. My duties when we started out were to check up each machine with the men in it, and the supplies, and I took the last machine. Doctor McDonald and I were, I think, the only ones and the chauffeur in that machine, the last machine. Since I have been subpoenaed here I have been trying to recollect the names of the men who were in those machines, trying to refresh my memory, and I made a small short list, if you want me to refer to it. The name of B. Adams sounds familiar; I wouldn't be certain whether he was there or not. I don't remember Lewis W. Andrews. A. W. Casey was there. N. G. Casey was in the office at the time. He was one of the employees in Doctor McDonald's office. I think N. G. Casey was his son. I don't know W. P. Casey. Wallace D. Dickinson was not there. I don't know George W. Dickinson. I remember Stephen W. Dorsey, but I don't remember whether he was in the party or not. I don't remember L. B. Dorsey. M. Z. Elliott was in the crowd. I don't

(Testimony of Gustavus A. Horn.)

remember the name O. C. Gebauer. I don't remember George C. Haldeman. Some of these parties might have been in it, but I don't remember. I don't remember F. J. Haldeman. Addison C. Macon was not in the crowd, although I remember the name. She was a lady that came up in the office quite often and Doctor McDonald lived with the mother. They had an apartment house. I knew Henry L. Musser. I don't remember Warren F. McGrath. I don't remember H. R. McDonald. I remember J. E. McDonald, that is the son of Doctor William Z. The name Albert G. Shaw sounds familiar, but I wouldn't say that he was there. Frank R. Strong was one of the trustees.

Doctor McDonald did pretty near all of the talking, if I remember right, about my name appearing upon these locations. [364] It has been about 12 years ago, but it was between Doctor McDonald and his son James that I received my instructions from, and after we reached McKittrick,—it was either McKittrick or the cabin right near our nearest point to the field, Doctor McDonald told me that one of the boys, or several of the boys could not—something had happened that they could not be on deck, as he said, and asked me to act instead of one of them, and asked me to make the location for one of these men, but he didn't mention the name, as I remember it. I don't know the name of the man for whom I was substituted. I placed my name upon these location notices because Doctor McDonald at the time we spoke about that,—he says, that from the fact

(Testimony of Gustavus A. Horn.)

that one of these boys didn't show up, and he was to be in the party, I should make the claim, and I could then make the assignment to this party's trustee. I was to allow my name to appear on the notices and then assign, because I had no interest in it at all. I had no interest in the project at all. I never claimed any interest in these lands that were located. I never put any money into them for the development or cost of location. I afterwards assigned this deed of March 4, 1908, to Frank R. Strong and M. Z. Elliott, as trustees. I don't remember the date, but it was few weeks after his return from up north. It might have been a month and a half, or it might have been two months in McDonald's office he handed me an assignment and told me to sign it over. He said, "You know that was what you were supposed to do, and you had no interest in it, anyway," and he says, "Mr. Elliott and Mr. Strong are the trustees for the boys that were not up there," or something to that effect, and I signed the paper. I was not claiming any interest in the lands at the time I made this assignment. I didn't have enough [365] interest in it to even inquire into the project. I never received anything of value for the placing of my name upon these notices, or the execution of the assignment. I didn't even get all my salary for bookkeeping. I never received anything for the execution of this assignment or conveyance to Strong and Elliott. I was never a stockholder in the British-American Oil Company. I don't now claim any interest in any of the lands

(Testimony of Gustavus A. Horn.)

upon which my name appears as a locator. Neither Strong nor Elliott ever verbally or in writing declared to me, or in my presence, that I had any interest in any of these lands. Neither one of them ever talked to me about the matter at all. I have talked to Elliott many times in the office, but just casually, "How do you do." He used to come up to Doctor McDonald's office often. No person ever declared in my presence that I had any interest in these lands. I was not consulted or advised about the execution of the deed of May 4, 1909, from Strong and Elliott, in which they described themselves as trustees, conveying to the British-American Oil Company the 207 claims. I never received anything on account of the execution of that deed.

After consulting the list I made ten days ago I can tell you the names of some other men who were up there when the lands were located. There was one young man by the name of Clyde Warrman; another man by the name of Ed. LaTenzer; another one named Dave Clark. The other men were John Ramage, Herbert Royce, Clarence Reynolds, E. E. Cole and A. H. Butler. I don't remember whether they went up with us or not, but they were in the crowd part of the time. I understood that these men who were in the party and whose names did not appear on the location notices went along to locate the land. They [366] were just doing the physical act of tacking up the notices and things of that sort. They were men employed by Mr. McDonald. They all went up. They were part of my gang, as

(Testimony of Gustavus A. Horn.)

it was designated. I think my gang, as Mr. McDonald called it, consisted of 47 men. I know we had six or seven machines and they were crowded to their capacity. I don't know the extent or scope of country these locations extended over so far as acres and miles or rods are concerned, but I do know that it was far enough that certain men were stationed on certain prominent points with pistols or guns so that they could signal each other by shooting, giving shots; they had a code of a certain number of shots, whatever the code was; that was the signal back and forth. They were to make certain movements, or do certain things to use the shooting as a signal to let each other know what they were doing. These locations were made immediately after midnight, December 31st, 1907.

Cross-examination.

(By Mr. WEIL.)

I had no intention of entering into any fraudulent conspiracy to defraud the Government of the United States out of any land at that time. I didn't understand that that was the intention of the men who spoke to me. In fact, when I started from the office, I was supposed to go in the capacity of, you might say, straw-boss and timekeeper, and so on. The sole reason for my participation was the absence of some individual and I acted in his place or stead. I was supposed to act on his behalf. I didn't claim any interest in it myself. At the time I believed I was making the locations on behalf of some other man. That was what I was told. I did not know of an

(Testimony of Gustavus A. Horn.)

association that was organized to locate these lands. [367] I knew nothing about it. I did not know Senator Dorsey personally. I knew Senator Dorsey had been up to the office a number of times to see Mr. McDonald, but that was nothing unusual. Doctor McDonald had all sorts of business men and moneyed men come up there all the time. McDonald and Stott were promoters of various enterprises.

Testimony of George C. Haldeman, for Plaintiff.

GEORGE C. HALDEMAN, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is George C. Haldeman. I reside in Los Angeles. I am a deputy collector of internal revenue. I was living in Los Angeles in the years 1907, '08 and '09. I was employed during that time by Ex-senator Dorsey as a secretary. I am the George C. Haldeman whose name appears upon 108 notices of the location of placer mining claims recorded in the records of Kern County, California. I am the same George C. Haldeman whose name appears upon the location notice of the Zee No. 8 placer mining claim embracing the Northwest quarter of Section 15, Township 31, Range 22, upon which Warren F. McGrath, O. C. Gebauer, L. W. Andrews, Wallace D. Dickinson, George W. Dickinson, Frank R. Strong and Stephen W. Dorsey also appear as locators. I signed the location notices which were

(Testimony of George C. Haldeman.)

posted there and bear my name. I remember of signing them but can't tell you when I did it. I signed those location notices under the same circumstances as any of the rest, that I was to have an interest in them—my interest in the location. Mr. Elliott and Mr. Dorsey first talked to me about making these locations. I can't state exactly whether it was determined at any time [368] upon how many notices my name would appear.

Q. Can you tell me why it was that your name appeared on 108 of these location notices and the others varied all the way from seven to 201 locations?

A. Well, I presume it was because I was to have an interest in the thing, that I appeared oftener than some of the others. I don't know why the others didn't.

Q. What did Senator Dorsey say to you about this?

A. That I was to participate with the rest of them.

Q. Well, who were the rest that were to participate in it?

A. Well, the names that you mentioned there, Mr. Dorsey, Mrs. Dorsey, Strong, Dickinson, Jones and Elliott.

I may have known B. Adams, but I don't recall him now. I knew Lewis W. Andrews at that time. I think he was to participate. I don't recall the name A. W. Casey or N. G. Casey or W. P. Casey, I don't know whether they were to participate in the benefits derived from making these locations. I knew Wallace D. Dickinson and George W. Dickin-

(Testimony of George C. Haldeman.)

son. They were to participate. I knew Stephen W. Dorsey and L. B. Dorsey; also M. Z. Elliott. They were to participate in these lands. I knew Miss O. C. Gebauer. I understood she was to have an interest in them. I don't recall the name G. A. Horn. I don't know whether he was to participate or not. I knew F. J. Haldeman. She was my wife. She was to participate with me in those lands. I don't recall Miss Addison C. Macon. I don't know whether she was to participate or not. I knew Henry L. Musser. I don't know whether he was to participate, I am not sure. I think he merely went into it to help me along, a friend of mine. Mr. Dorsey asked me to get the names of some of the persons whose names appeared upon these [369] location notices. I don't recall just what he said about anybody else, any friends that I wanted to put on there.

Q. Well, did he say anything about whether or not Mr. Musser would participate in the benefits to be derived from making these locations?

A. I have a faint recollection that he did say that they would be taken care of; something like that.

Q. Was there any definite amount stated for these people?

A. I don't know; if he did, he made it to them direct; he didn't through me.

I knew Warren F. McGrath. He was to participate. I knew H. R. McDonald and J. E. McDonald. They were to participate. H. R. McDonald is Helen McDonald, J. E. McDonald was the son of W. Z.

(Testimony of George C. Haldeman.)

McDonald. J. E. McDonald was to participate in the benefits derived from these locations. Albert G. Shaw was to participate the same as Mr. Musser was; he was chosen by me and Mr. Dorsey. I knew Frank R. Strong. He was to participate in the benefits.

Q. How was it determined, the proportion in which each person would participate in the benefits to be derived from making these 207 locations?

A. Why, each one according to his—according to what he would be entitled to, as I understood it.

Q. And what was each one entitled to, as you understood it?

A. Well, sort of groups, as I understood it, at the time. I was to have a third, I think it was.

Q. Of all of the claims?

A. Yes, as I understood it.

Q. A third interest in all the claims?

A. Yes. [370]

Q. Well, how much did you finally get out of it?

A. I got, I think, one hundred and ninety some shares of stock.

Q. In what company?

A. In the British-American. I think it was the British-American—yes, it was.

I couldn't tell you when I first learned of the British-American Oil Company. After they had—I understood they took this over after they were going to form the company, they took this company as it was already organized.

Q. Well, did you have an understanding before January, 1908, that they were going to have a com-

(Testimony of George C. Haldeman.)

pany to take these lands over?

A. Well, they were going to do something of that sort. It was not definitely understood just how they were going to arrange it. I knew I was assistant secretary of the company for a little while.

I was assistant secretary of the British-American company after this group of men took it over. They merely took over that company, I understood, on account of its being an organized company. It was just a shell that was already in existence, and they took it over to carry out their plans. I don't remember when they first commenced to talk about taking over this company. I don't remember the date; some time prior to that. It was some time after they located that they took over the British-American. They had not commenced to talk about it before they had made the locations. They commenced to talk about it after the locations were made.

I requested Mrs. Haldeman to participate in these locations. I explained the situation to her, she would have a [371] joint interest with me. The 192 shares of stock that I got in the British-American Oil Company represented both the interest of myself and Mrs. Haldeman. We didn't each have 192 shares. I knew about the deed that was made on March 4, 1908. I don't remember the date. I remember of making that deed to Strong and Elliott. I suppose Senator Dorsey and Mr. Elliott both talked to me about the execution of this instrument. I don't remember just how it came about. I didn't suggest that I would sign it. It was talked over

(Testimony of George C. Haldeman.)

among all of them there that that was the proper way to do it. I talked to Mrs. Haldeman about her signing it. At the time of the execution of this deed in 1908, there was some talk about the trusteeship of Elliott and Strong, but I don't recall just what it was. My recollection as nearly as I can remember, it was for the whole of the rest of the locators. Mr. McDonald was to have some interest in that. He doesn't appear to have been a locator, and yet I think he was to have an interest, I don't know so. There were so many interested in it I don't know which was which. Most of my conditions and directions came from Senator Dorsey, and Mr. Elliott, as well. I talked a great deal with Mr. Elliott. I was employed at that time in a confidential capacity by Senator Dorsey. I did not receive anything specifically because of the execution of this deed of March 4, 1908. I executed it because I was a locator, that is all.

Q. When did you get your 192 shares of stock in the British-American Oil Company?

A. Well, I can't give you that date. I don't—it was after they were fully organized and took over the name of the British-American Oil Company; I don't remember the date at all.

I suppose it was Senator Dorsey who determined that my share of the capital stock of the British-American Oil Company should be 192 shares. I didn't know at that time how many shares of stock Senator Dorsey had. At that time I didn't know whether he had more or less than I had. I did after-

(Testimony of George C. Haldeman.)

wards. [372] I found out afterwards that Senator Dorsey had more. I don't know how and by what reasoning it was determined that Senator Dorsey should have a greater number of shares than I had. I hardly know how he arrived at it. I just remember he said that was what was coming to me, so I didn't make any fuss about it. I accepted it because I wanted to keep my position; it was necessary. I raised no question as to the quantity for that reason, and I accepted that as the share of myself and Mrs. Haldeman. I did not ever afterwards receive anything of value from the British-American, or from Senator Dorsey, or any other person by reason of the fact that my name appeared upon these location notices. When the lands were conveyed by Strong and Elliott as trustees on May 4th, 1909, it was talked over in my presence. I suppose I had something to say, not very much. I think Mr. Elliott and Senator Dorsey were in charge of the negotiations with respect to the making of that conveyance. I don't recollect any expression at that time by either Elliott or Strong as to their trusteeship, and to whom they should be accountable for their action in the transfer of this property. I don't recollect of any expression at that time by these people, Strong or Elliott, as to what extent they should be accountable to me, or to any other person, by reason of their making this transfer. I am not now a stockholder in the British-American Oil Company. I disposed of my stock four or five years ago. I didn't claim any interest in the Section 15, Township 31, Range

(Testimony of George C. Haldeman.)

23, other than the interest which was represented by the 192 shares of stock in the British-American Oil Company, except I have spoken of what I should have, I should have had more stock. I didn't make any claim to any specific portion of the lands embraced in that [373] quarter-section. My claim had been these 192 shares of stock. I didn't put up any money in these matters. My interest in these transactions was to come through Senator Dorsey. I didn't look to any person other than Senator Dorsey. I did depend on Mr. Elliott to see that I was properly taken care of. I also depended upon Senator Dorsey. I knew that Senator Dorsey put up money in connection with these matters. I never expressed to Senator Dorsey my dissatisfaction with the interest I received out of that. I don't know who did put up the money to carry on these locations and the development of these lands. I know that Senator Dorsey put up some. He was to put up some; that is the only thing I was interested in. I know some of the others put up some money, but I don't know how much or how many. I don't recollect how much Senator Dorsey put up. I can't say whether or not Senator Dorsey's interests in the lands were in any wise measured by the amount of money he put in the transaction.

I acted in this transaction for Mrs. Haldeman. She followed my directions in signing these locations and carrying on these transactions. Whatever was mine was hers, and whatever was hers was mine in these matters. We simply acted in *consort*, as man

(Testimony of George C. Haldeman.)

and wife. I advised her from time to time as to what was going on. She assented to what I did in these transactions.

Cross-examination.

(By Mr. WEIL.)

The only recollection that I have about the circumstances under which this land was located was that Mr. Elliott and I talked it over. He was there sitting in my room, my room was separate from Mr. Dorsey's, and he told me what he [374] was going to do; that is, he discovered some valuable land up there, and they were going to locate it, some people had located it, and they had fallen down on it, and they told him of it. There was something said by Mr. Elliott at that time about forming an association of people for the purpose of taking up these lands. There were a number of groups of people interested in taking up these lands. I was mostly interested in our own group. Our group consisted of Mr. and Mrs. Dorsey and myself and Mr. Musser and Mr. Shaw. It was my understanding that Mrs. Haldeman and myself were to share just the same as the rest of the locators in our group. I suppose I made a mistake on my direct examination when I said that I was to get a third of all the locations. I meant I was to get a third of our group and Senator Dorsey was to get a certain interest in this thing for his group and I was to get a third of it. That is what I should have said. As a matter of fact, I didn't get a third of that group. I was disappointed in that. I don't think that I got what was coming to

(Testimony of George C. Haldeman.)

me. There was no question about it having been understood that I was to have a third of the interest of our group. I understood that Mrs. Dorsey was to have an interest in Senator Dorsey's group and Senator Dorsey himself was to have an interest. I remember that Mr. Strong was the head of a group that was in the association. I think Mr. Strong's partners were in his group. I think both of them were in, and Miss Gebauer, I think, and Mr. Andrews. I am not sure whether Mr. Andrews was in that or not. I think he was, yes. Mr. Dickinson was Mr. Strong's partner to whom I referred. I think there were two. I am not sure whether both of the Dickinsons were in it or not. I know there was the Elliott group in this association, but I don't know just who was associated with him. I knew Dr. Davis. He was associated with Elliott, [375] I think, in that group. The Elliott group consisted of Dr. Davis and Mr. Elliott. I know the Dr. McDonald group. Both of the Butlers were in his group; I am not sure whether they were in that group or not, or whether that was another group. I mean that they were a separate group from ours. I remember Jim McDonald. He was a son of W. Z. McDonald. W. Z. McDonald was one of the associates who was the head of a group. I am pretty sure Jim was in his father's group. I don't know who was in the Butler group. I never knew Mr. Butler before. I knew Senator Jones. He was the head of a group. His group consisted of himself and his son Roy Jones. My idea of the situation is that there

(Testimony of George C. Haldeman.)

were a number of men that got together. I have named six as the heads of the groups who formed an association for the purpose of locating the claims, and each one of these six represented a little sub group. I understood that these locations were made on behalf of the entire association. Regardless of whether I signed 40 locations, or whether I signed one, or whether I didn't sign any, if I was interested in this association through one of the groups, my interest was the same in all the locations; that was the understanding. When the conveyance was made to Elliott and Strong as trustees, that did not change the interest of anybody in the association that I know of. That was merely for convenience in handling it, and putting it into person's names. I do not know now what the interest of each one of these groups was in the entire enterprise. As a matter of fact some of the members of these groups who were entitled to an interest in these locations, did not locate at all. For example, 'Senator Jones' name did not appear on any of the location notices; neither did Roy Jones' name appear on any of the location notices, and that did not interfere with their interest as agreed on in [376] the entire group of names. I did not know why Senator Jones' name did not appear on any of the location notices. I do not know why Roy Jones' name did not appear. I do not know why Butler's name did not appear. Senator Jones was down in Santa Monica most of the time. I think Butler was in New York.

Testimony of George W. Dickinson, for Plaintiff.

GEORGE W. DICKINSON, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is George W. Dickinson. I reside in Los Angeles. I am engaged in the real estate business. I was a brother to Wallace D. Dickinson. He is dead. I am the George W. Dickinson whose name appears upon the location notice of the Zee No. 8 placer mining claim, embracing the Northwest quarter of Section 15, Township 31, Range 22, upon which also appear the names of Warren F. McGrath, O. C. Gebauer, L. W. Andrews, Wallace D. Dickinson, George C. Haldeman, Frank R. Strong and Stephen W. Dorsey as locators. I signed the original location notice. It was signed the very last of December, 1907. The records of Kern County also show that there are recorded therein, in addition to the location notice just mentioned, 200 other placer mining locations which also bear my name as a locator. I signed those location notices for my own benefit, and the other members of my association, associated with me. As Mr. Jones has stated, these associates were divided up into groups. There was the Strong group, consisting of myself and Mr. Andrews; the Jones group, Senator Jones and his son Roy; the Dorsey group, Senator Dorsey, his wife and Mr. Haldeman; the Butler group, A. H. Butler and [377] his son; and the Elliott group, Mr. Elliott and Mr. Davis; and

(Testimony of George W. Dickinson.)

the McDonald group, himself and son. The Butler group consisted of Mr. Butler and his wife and son. Mr. Strong and myself carried on the negotiations with the other members of the syndicate for and on behalf of our group. I attended a few of these meetings, a very few of them. Ultimately, at the end, I got 1,064 shares of stock of the British-American Oil Company out of the transaction. That was my proportion of our group. Our group was to get one-sixteenth—sixteen per cent, and I was to get one-third of our group. There were three in our group, Mr. Frank R. Strong, L. W. Andrews and myself. Wallace D. Dickinson was not in our group. He didn't get any interest in it. He was acting in this matter for all of us, all of the members of this whole syndicate. The affairs of this syndicate were carried on as the affairs of any other associated body would be. The affairs were carried on for the benefit of all those names that I have mentioned. There was no one person authorized to act for the entire syndicate.

Q. Was the authority to act delegated to any lesser group of the entire syndicate?

A. It was generally carried on by the heads of each group.

They sort of formed a committee or board that acted for the syndicate. That is the way and manner in which they dealt with outside transactions. I knew in a general way about the making of the deed of March 4, 1908, to M. Z. Elliott and Frank R. Strong, as trustees. I discussed the making of

(Testimony of George W. Dickinson.)

that indenture with Strong. I received nothing of value other than the shares of stock I ultimately received in the British-American Oil Company for the execution of that instrument. The fact was that I was a locator upon 201 of the claims—did not have any bearing upon the quantity of stock I ultimately received in the British-American Oil Company. I was simply to have one-third of our group's proportion. I was to receive [378] that amount simply because there were three of us in our group. The fact that I made 201 locations had nothing whatever to do with that. At the time the locations were made I advanced one-third of a thousand dollars. Our group advanced one thousand dollars. The amount of money that I advanced did not have anything to do with the amount of stock I ultimately received. I still hold my stock in the British-American Oil Company. I knew Miss Gebauer. She was not necessarily acting in the interest of our group. She acted in the interest of all the syndicate. I am not certain that I am the one who requested her to act.

Cross-examination.

(By Mr. WEIL.)

The transfer to Elliott and Strong, as trustees, made no change in the interests of the various members of the association in the property. That was made just for convenience sake.

Testimony of A. H. Butler, Jr., for Plaintiff.

A. H. BUTLER, Jr., a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is A. H. Butler, Jr. I am the son of A. H. Butler, Sr. My father is dead. I don't think I was a locator on any of these 207 claims you have been talking about. I had an interest in the British-American Oil Company. When it was originally formed, we formed the company to develop oil lands, but never got the deal through and [379] just dropped it. I think I had one share of stock in the company at that time, I am not sure. The Mr. Cole who appears in that was a man that was associated with Mr. McDonald and my father and myself and Mr. Thaddeus. Mr. Thaddeus was an artist from Coronado Beach. The men I have just mentioned composed the entire stockholders and first directors of the British-American Oil Company. That company never did anything. It never had an assets or liabilities prior to January 1, 1908. After the corporation was turned over to this so-called syndicate, I became a stockholder in the British-American Oil Company. I didn't get my stock; I left it in my father's name for some time, but eventually I got 1,330 shares. My father held it all for the time being. It was in A. H. Butler & Company's name. I had nothing to do with determining what quantity of stock should be turned over to the A. H. Butler

(Testimony of A. H. Butler, Jr.)

Company. I had nothing to do with that part of the deal. I was in the field. My father did the business end, the clerical end. I knew nothing about that transaction.

Q. What factor entered into the determination as to what amount of stock you should receive?

A. Well, when we went into it, I was to have a third, my father a third, and my mother a third; and I did the field work for my interest.

I was present in the field when the location notices were actually posted upon the lands. I don't think I had my name on any of the location notices, but I was out in the field helping. I was helping tack up the notices and mark the boundaries, and so on and so forth. I was 25 years of age at that time and a citizen of the United States. I am [380] a native born citizen. There was no legal reason why I was not qualified to make a placer mining location, either individually or as a member of an association.

Testimony of L. W. Andrews, for Plaintiff.

L. W. ANDREWS, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Lewis W. Andrews. I am a member of the firm of Andrews, Toland & Andrews, counsel in this cause. I am the L. W. Andrews whose name appears upon the location notices of the Zee No. 8 placer mining claim embracing the Northwest

(Testimony of L. W. Andrews.)

quarter of Section 15, Township 31, Range 22. I signed the original location notices. The records of Kern County also show that I participated as a locator in 17 other locations of placer mining claims made at the same time in Kern County. I signed all of the location notices. I don't know as there was any particular fact that determined the limitation as to the number of locations in which I appeared as a locator. I signed that many locations and became an active locator on that many claims. I was called into this transaction by Mr. Frank R. Strong. Mr. Strong, Mr. Dickinson and I were interested in a number of different transactions, and this became one of them. I first became interested in this matter about the middle or the latter part of December, 1907. Eventually I received some stock from the British-American Oil Company. I received this stock because of these locations that were made. Mr. Dickinson has just testified he received 1064 shares of stock in the [381] British-American Oil Company, and I received the same amount that he did, which must be the correct amount. I did not put up any money on account of these 17 locations, that I made, as separate from the entire transaction. At the time of the locations I put up a third of a thousand dollars for use in the entire transaction. The fact that I received 1064 shares of stock in the British-American Oil Company was not controlled in any way by the fact that I put up this three hundred and thirty-three and a third dollars. It was not controlled in any way by the fact that my name appeared

(Testimony of L. W. Andrews.)

on 17 of these location notices. The factor which determined the proportion of my share was this. I was interested to the extent of one-third in what has here been termed the Strong group, which had a 16 per cent interest in the entire enterprise; and when that was carried through ultimately to the issuance of stock in the British-American Oil Company, that became the proportion of the entire stock that I received, or substantially so. I have visited these lands. I have been up through the Midway a good many times. I did not help pick out the particular lands which would be covered by my locations. I did not visit these lands to know them until some time after the locations had been made. There were funds advanced from time to time in a small way for the development of these lands, and I contributed my part. I have heard these transactions testified about by the other witnesses and they are substantially as they have detailed them. That is practically my understanding of the situation. I was present in Senator Dorsey's office at three or four conferences in the last of December, and I understood the interests of the various groups of individuals in the association to be substantially as Mr. Jones has testified. [382] It was my understanding in December, 1907, that the Butler group was to receive one-fifth, and each of the other five groups were to receive one-fifth of the remaining four-fifths in the entire enterprise. Mr. William Z. McDonald was present at some of those conferences. Mr. A. H. Butler, Sr., was not present. I didn't meet him in this transac-

(Testimony of L. W. Andrews.)

tion at that time. I met him subsequently. I didn't meet him at any time prior to the making of the locations. I had not seen him prior to that time. I understood that Dr. McDonald was in touch with Butler, and I understood that Butler's son, the young man that just preceded me here, was in the field, up in the Midway, and was assisting in the work there; but he did not participate in any of these conferences. I am still a stockholder of the British-American Oil Company.

Cross-examination.

(By Mr. WEIL.)

I had never heard of the British-American Oil Company at or prior to the time of making these locations. None of these locations were made on behalf of the British-American Oil Company. The circumstances under which the British-American Oil Company finally acquired this property are as follows:

The locations first were transferred to Mr. Strong and Mr. Elliott as trustees. That was sometime after the making of the locations. They held them as trustees for the entire association. Subsequently they were transferred by these trustees to the British-American Oil Company. My first acquaintance with the British-American Oil Company was at a time some weeks after the making of the locations, when there was a discussion as to how they would be held and how they would [383] be handled. A suggestion was made, I think by either Mr. Elliott or Senator Dorsey, that an Arizona corporation be

(Testimony of L. W. Andrews.)

organized. Dr. McDonald then tendered this corporation, which he said had been organized for a purpose that had failed, and that it had never transacted any business, and accordingly that corporation was taken over. That was my first acquaintance with it, or the first time I heard of it.

Q. Did you personally look into the affairs of this corporation, to see that it was free of all entanglements and had no debts and no liabilities, so that you could safely use it?

A. I went with Dr. McDonald and someone else, possibly Mr. Elmer Cole, to the Columbia Trust Company, to look over the organization papers, and satisfied myself from an examination of the records, together with what Dr. McDonald and Mr. Cole stated at the time, that the company had neither assets nor liabilities, and therefore I was willing to have it taken over.

Q. In the original discussion that preceded the location of these lands, was it the intent of you and your colleagues to form a regular placer mining association, such as was commonly recognized under the law; was that the purpose? A. Yes. [384]

Testimony of Helen R. Hopper, for Plaintiff.

HELEN R. HOPPER, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Helen R. McDonald Hopper. I re-

(Testimony of Helen R. Hopper.)

side at 716 South Manhattan Place, Los Angeles, California. I am the daughter of the late William Z. McDonald. I am the H. R. McDonald whose name appears upon 80 placer mining location notices which are of record in Kern County, California. As well as I can remember—it has been ten years ago, I think—I was asked by my father or my brother, I don't recall which, to sign the location notices simply as acting for the other people with whom he was interested. That is as near as I can recall how I came to sign them. I had absolutely no interest in them. I did not put any money into them. I did not expect to put any money into the transaction. I have never claimed any interest in any of the lands that were covered by these locations.

I signed the deed by which myself and 20 others conveyed all of these locations to Frank R. Strong and M. Z. Elliott. I do not remember signing the deed. I can't tell you I remember the incident, but I know those names were familiar as being associated with my father. I absolutely received nothing of value for signing that deed. Absolutely never have I received anything from my father for anything. I received nothing of value on account of these transactions and the making of these locations. I do not claim any interest in any of these lands now. The situation was explained to me by my father or my brother, just as I explained it to the judge, that I was acting as an agent for the other men [385] with whom he was associated. At the time I signed these location notices I did not expect to claim any

(Testimony of Helen R. Hopper.)

interest in these lands myself. I do not know how the lands were eventually divided and who benefited by reason of these locations. I have never been advised on that subject.

Testimony of Addison C. Macon, for Plaintiff.

ADDISON C. MACON, a witness called on behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Addison C. Macon. I reside in Los Angeles, California. I was living in the city of Los Angeles in 1907, 1908 and 1909. I think I am the same Addison C. Macon whose name appears upon 41 placer mining locations recorded in Kern County, California. I remember having signed the notices in the Lankershim Building in Los Angeles. It was in Mr. William Z. McDonald's office. I signed these location notices at the request of Mr. McDonald. I don't recollect just exactly what was said to me. It was a number of years ago. Something that I signed these on behalf of him and his associates. I did not have any interest whatever in these lands. I have never claimed any interest in them. I have never received anything of value by reason of the fact that I signed these location notices. I don't exactly remember having deeded these lands away to M. Z. Elliott and Frank R. Strong. There was something of the kind, but I can't remember just what; I think that I really don't recollect that. It was sev-

(Testimony of Addison C. Macon.)

eral years ago and there are several things that I don't remember exactly. I must [386] have done it, though, if my name appears there. Mr. McDonald, I suppose, asked me to sign this deed to Strong and Elliott. I did not receive anything of value for signing the deed. Prior to the time I signed the deed I did not claim any interest in these lands. I never benefited in any way from the making of these locations. I entered into this transaction and signed these location notices and the deed for the benefit of Mr. McDonald and his associates. I never had any idea that I would benefit personally by it in any way. I did not have any intention of entering into this transaction for my own personal benefit or gain.

Cross-examination.

(By Mr. WEIL.)

To the best of my recollection the persons who were Mr. McDonald's associates in this transaction were Mr. Elliott, Mr. Butler, Mr. Dorsey and Mr. Strong, and I think there were several others,—Mr. Jones and his father, but I don't remember any more. It was an association of men with Mr. McDonald, and I was locating on their behalf, as their agent. I do not remember of having located on behalf of the British-American Oil Company. None of these acts that I did were intended by me, or suggested by anybody to me, that they should be on behalf of the British-American Oil Company or any other corporation.

Redirect Examination.

(By Mr. HALL.)

I don't recollect that there was any writing which

(Testimony of Addison C. Macon.)

purported to or did indicate that I was acting as the agent for these people; I don't remember.

Q. What you said about being an agent was just what you [387] understood from the situation, was it? A. I think so.

Q. There was no express contract of agency that you know of, that was entered into between you and Mr. McDonald?

A. I don't recollect anything of the kind.

Q. He simply asked you to sign these for his benefit, was that it? A. Yes.

Q. And you acted for him in that matter?

A. I think I did.

Recross-examination.

(By Mr. WEIL.)

Q. When you said "his benefit" and "him," you meant him and his associates?

A. His associates, yes, he and his associates.

Redirect Examination.

(By Mr. HALL.)

I was never a stockholder in the British-American Oil Company or the Midway Oil Company.

Testimony of W. P. Casey, for Plaintiff.

W. P. CASEY, a witness called on behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is W. P. Casey. I reside in Imperial County, California. I am engaged in the fire insur-

(Testimony of W. P. Casey.)

ance and grain business. I was living in the city of Los Angeles in the early part of 1907 [388] and all of 1908 and 1909. I presume I am the W. P. Casey whose name appears upon 15 notices of location of placer mining claims which are recorded in the records of Kern County, California. To the best of my remembrance I only filed on two claims. If my name appears on any more I don't know what they are. You have read to me the list of a number of claims upon which you say my name appears as a locator. I do not remember having been a locator on all of those claims. I do not recall any of the numbers of any of the claims I was a locator on. I was taken up there with this party, and I was taken out to a place from our camp, some distance from the camp, and was told that this was such and such a stake, and I was told to make that location, and then go either a half a mile or a mile east, I think it was, and make another location, and come back to camp. Those two locations were all that I really put on the ground myself in person. Those are the only two I remember of specifically, and those are the only two I supposed I made. I don't think I was ever advised after that time, and up to the present time, that my name had been used upon other locations. It is so long ago my memory does not serve me. I went out with this party because my father was associated with W. Z. McDonald in some other things, other matters, and at the instance of Mr. McDonald, he asked me if I could get off, get away from my work and go up and make some locations on some oil

(Testimony of W. P. Casey.)

lands; and I was able to finally, and I went. I supposed it had something to do with my father's business, and did not ask into it particularly. I was a young fellow, working on a job about 12 hours a day, and it was a chance for me to get a little vacation, to be frank about it, and I went up on this trip; I wanted to see the country, and I thought I was doing some good for my father's association with [389] Mr. McDonald. I never received anything of value because of the making of these locations. At the time I made them I did not expect to receive anything individually of value. I thought my father would profit by it with his associations with Mr. McDonald. I thought my father, by assisting Mr. McDonald, would derive some benefit from this action, not that he was to receive anything from the effort itself particularly. It was simply to advance his relations with Dr. McDonald and thereby aid him. I understood my father was not to receive anything directly out of these lands that were located. I do not recall having signed the deed on March 4, 1908, conveying the lands upon which I was located, and other claims to the number of 207 in all, to Strong and Elliott. The only thing I remember is that I was asked to go to Santa Ana with some of these same gentlemen who were interested in the other deal, the original locations, and I signed certain papers which I was told was all right; I don't know whether it was a deed or what it was. I was not consulted in any way about the making of the deed or the purpose of it. I did not receive anything of

(Testimony of W. P. Casey.)

value or any benefit by reason of having signed it. I did not expect any. I never claimed any interest whatever in these lands upon which my name was used as a locator. I do not now claim any interest in those lands. I was never promised anything of value for the use of my name upon those lands. My expenses to the oil fields were paid. I did not receive anything to pay the expense with; they were paid by someone who was handling the trip. There was a paymaster along that took care of all expenses as we went along. I do not remember having received any compensation for that trip.

I have never been a stockholder in the British-American Oil Company. I do not claim the least interest in any stock in the British-American Oil Company that is held in the name of any other [390] person. I have never claimed any interest in the British-American Oil Company or any of its stock held in that way.

I am not now and never have been a stockholder or interested in the North Midway Oil Company. I do not remember having been promised any interest in the North Midway Oil Company by reason of making these locations and signing this deed.

My mother is Nettie G. Casey. I talked to my mother about making these locations and she said, "I don't see what they want me for; I don't know anything about it."

Cross-examination.

(By Mr. WEIL.)

I never was a stockholder or officer or director of

(Testimony of W. P. Casey.)

the British-American Oil Company. I do not want you to understand me to say that I think someone else signed my name to these locations, but the situation was this: It was ten years ago and I was acting under the guidance and the direction of Mr. McDonald, who my father told me I could depend on to not ask me to do anything I should not do; and I did not read all the documents through to know what I was signing; I took it for granted that he was taking care of it. I do not think that I am being accused of having done anything wrong, but I don't know but what my name might have been used as a stockholder when I didn't know about it. I might have had something put on the records that I have no knowledge of. I never heard of the British-American Oil Company until recently.

Q. You made these locations, as I understand it, at the request of Mr. McDonald, acting as agent for some association or other that was not disclosed to you; is that correct?

A. Well, I did not act in a sense as an agent. I was acting as a friend or acquaintance, who was doing the other fellow an [391] accommodation.

Q. In other words, you were not acting on your own behalf? A. No.

Q. You were acting in a representative capacity, whether it was on account of friendship or for money, you were acting for someone else's benefit?

A. Yes. I did not expect to derive any benefit out of it except, as I explained, that I presumed my father would derive some benefit from his associa-

(Testimony of W. P. Casey.)

tion. I did not expect to derive any benefit from the lands which I located. They were located on behalf of someone else. I didn't know who the someone else was; I assumed it was Mr. McDonald.

Q. Did you know he had any associates in the business?

A. Why, I didn't really know that he had till I went to Santa Ana with the other gentlemen who were in the party and signed the papers that I signed there, and then he appeared to have other associates.

Q. Did you ever meet a Mr. Elliott?

A. Well, if Mr. Elliott was the man whose machine we drove to Santa Ana in, I did. I don't remember his name; someone from Pasadena.

I don't remember the name Butler at this time. W. G. and W. Z. McDonald were the only persons in the party whose names I knew. They were the only two people I knew. I can't tell you accurately how many people were in our party at this time. There were at least two automobiles. There were at least six or eight people. There might have been more than that. There might have been more than two machines. I know of two machines that went out from [392] McKittrick. Beyond what I have told you, I don't know who constituted this association for whom I was acting. I don't know the names. I didn't know Senator Dorsey. I never heard of Senator Jones, or Roy Jones, or Mr. Strong, or Mr. Dickinson. I don't know any of them. When I said that I didn't know, I meant that I didn't remember having heard the names.

Testimony of Warren F. McGrath, for Plaintiff.

WARREN F. McGRATH, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Warren F. McGrath. I reside in Los Angeles. I am engaged in the real estate business. I lived in Los Angeles during the years 1907, 1908 and 1909. I am the Warren F. McGrath whose name appears, with the names of seven other persons, upon the Zee Placer Mining Claim No. 8, embracing the Northwest quarter of Section 15, T. 31, S., R. 22 East. I signed a number of those location notices; the exact number I could not tell. I can identify my signature to any. That is my signature on the location notice which you have just handed to me. That is a location notice covering the West half of the Northwest quarter and the Northeast quarter of the Northwest quarter and the Southwest quarter of the Northeast quarter of Section 22, Township 21 South, Range 14 East. I signed these location notices at the request of Mr. Strong and his associates. I couldn't say who spoke to me about it personally. Mr. Strong, Mr. Dickinson and Mr. Andrews—there were a number interested. I was associated with those gentlemen at that time. I was connected with them in the real estate business. I was not [393] a member of the firm of Strong and Dickinson. I was there with them, associated with them. I had business relations with them and had my desk in

(Testimony of Warren F. McGrath.)

their office. It would be impossible for me to give you the exact conversation I had with Mr. Strong or who ever it was spoke to me about this matter. It was as a matter of accommodation to a number of associates with him that were locating these claims.

Q. Do you know how many locations your name was to be used upon?

A. Only by the—if I had kept a record of the number I signed, I would know exactly. I knew, of course, the different locations, and was told the rights I had.

I only knew the exact description of the lands on which my name appeared as a locator as I had access to the papers themselves.

I had no financial interest in these transactions. I did not put any money into them. I did not expect to put any money into them. I did not derive any benefit in a financial way from them. I had only a representative interest in these specific lands upon which my name appeared as a locator. I cannot recall all of the names of the persons, because I didn't know all of them. I knew a number that were close friends, and they had a number of associates, with whom I was more or less acquainted in a general way only, and some that I did not know. At the time I signed these location notices I expected to claim some portion of the lands that would be located with these location notices, only as a representative. So far as the Government was concerned, I would consider it a personal claim.

Q. But did you ever assume to exercise any act of

(Testimony of Warren F. McGrath.)

ownership over any portion of these lands upon which your name appeared as [394] a locator?

A. Only as a representative, I should say so.

Q. Not in your individual capacity, then?

A. No, sir.

I was never promised anything of value by reason of the fact that I responded to this request for the use of my name upon these locations. I did not expect to get anything of value out of it. I have never been a stockholder in the British-American Oil Company. I do not now claim any interest in the holdings or the property of that corporation in any way. I never was paid a cent on account of these locations. I signed the deed on March 4, 1908, conveying these lands, together with other lands, to M. Z. Elliott and Frank R. Strong. More than likely Mr. Strong suggested that I sign this deed. I do not remember specifically that it was Mr. Strong. I did not receive anything of value for executing that deed. I cannot state that I know what the trusteeship was that Strong and Elliott held under that deed, only from general knowledge. I don't know that I have anything specific as to the exact trusteeship or the exact interest. I could not say as to that. I knew a number that were interested, and it was for their general interest, but just how it was divided I had no specific information. That was not a trusteeship for my personal benefit. I don't know that it was for the benefit of a person known as B. Adams. I don't know any such man. I don't know any such man as A. W. Casey. I don't know

(Testimony of Warren F. McGrath.)

whether it was for the benefit of N. G. Casey or W. P. Casey. I can't say that it was for the benefit of Wallace D. Dickinson; I don't know that he had any personal interest in it. I think Mrs. L. B. Dorsey was probably one of the interested parties. I don't know G. A. Horn. I don't know anything about Addison G. [395] Macon's right in that trusteeship, or how she was a beneficiary. I don't know Albert G. Shaw or anything about his participation in that trusteeship. I do not now claim a personal interest in the Northwest quarter of Section 15, involved in this suit. The only thing I ever claimed was as a representative.

Cross-examination.

(By Mr. WEIL.)

I was acting as agent or representative for Mr. Strong and his associates. I can tell you the names of some of the associates that I was acting for. I knew Mr. L. W. Andrews, Mr. George W. Dickinson, Frank R. Strong, and Mr. Elliott, and Senator Dorsey, and Mr. McDonald, and two or three others that perhaps I don't recall their names readily. Mr. Jones was one of the number, and his father. There were others that I do not now recall. It was my understanding that the conveyance was made to the trustees for the benefit of the same people that I had originally made the location for. I was never a stockholder, director or officer in the British-American Oil Company, or interested in it in any way. I was not acting as its representative or as

(Testimony of Warren F. McGrath.)

its agent in making this location. I never heard of it at that time. I was not making these locations for its benefit nor acting in its behalf in any way at all.

Testimony of J. E. McDonald, for Plaintiff.

J. E. McDONALD, a witness called on behalf of the plaintiff, being first, duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is James E. McDonald. I reside in Los Angeles, California. [396] I am a son of the late William Z. McDonald. I was living in Los Angeles in 1907, 1908 and 1909. I am the same J. E. McDonald whose name appears upon 52 notices of location of placer mining claims recorded in Kern County, California. I became a locator on those lands because I was associated with my father in business, and I was interested with him in the location of these lands. My father first suggested to me that I become a locator on these lands. My father had been associated with Mr. Butler. I don't know whether he was at that time actively associated with him in any particular business, that is, whether there was any real association or tentative association at that time. I knew of a corporation known as the British-American Oil Company. I don't recall whether I was one of the original incorporators. If I was it was only as an incorporator. My father and Mr. A. H. Butler, Sr., were associated in that

(Testimony of J. E. McDonald.)

corporation. I knew about the business of the British-American Oil Company prior to January 1st, 1908. There was no business transacted by the corporation. It was formed for the purpose of transacting business, but it never got to the point where there was any business to transact. I became automatically a stockholder in the British-American Oil Company as soon as the company was organized and the different interests were designated. There was never any of the stock actually placed in my name to my knowledge on the records of the corporation. My father sold the stock that was held in his name. The portion of it that was his, he sold. I can't tell you the month; I think it was last year, to Mr. Heaton, and I believe Mr. Strong. That was a transaction that I only know of in a general way. I don't know just exactly who did get the stock. It was a proposition, and he sold it. My father died in November, 1917. None of the stock was ever actually transferred to my name. It was assigned. I had some of it in my possession at different times. I have none of it in my possession now. I [397] disposed of my interest in it some time ago.

Cross-examination.

(By Mr. WEIL.)

I remember the circumstances under which these locations which I participated in were made. In the fall, I should say in November or December, or thereabouts, of 1907, I was engaged in the real estate business. My father had prior to that been in

(Testimony of J. E. McDonald.)

the real estate business, and I took over the real estate business when he became interested in the oil business. And he came to me and said that he had under consideration the location of certain lands, he and others in Kern County; and if I would aid him in doing the outside work, that I would participate in any profits that were derived for his interest in the syndicate that was locating this land. I think I know who constituted this syndicate. There were six groups of people, containing anywhere from two to three, possibly four, I don't know, but I think three was all that there was in any one group, which would make approximately 15 or 20 people, offhand. In what was known as the William Z. McDonald group was my father and myself. In the Dickinson group there were Mr. Dickinson and Mr. Strong and Mr. Andrews. In the Jones group there was Senator J. P. Jones and his son, Roy Jones. In the Dorsey group there was Senator Dorsey and his wife. In what was known as the Elliott Group, I believe Elliott and W. J. Davis. And in the Butler group there was A. H. Butler, Sr., and Mrs. Butler, I think, and A. H. Butler, Jr. I believe that is the line-up, as I remember it now. I did some of the work in reference to the making of these locations. I was in the field about three or four weeks. My particular job was flagging the stakes and running rough surveys, locating the center stakes of the different sections, so that [398] we were sure to post the notices in the right place, and looking after the care of the men when

(Testimony of J. E. McDonald.)

they got there, and so forth, and looking up the records in the Land Office for the land that was already patented, and the checking up of final proofs of labor in the recorder's office, and seeing that the proofs of labor were filed, and so on and so forth. All of this work that was done by me was done on behalf of this association of which I was a member. I did not understand that the number of locations on which my name appeared bore any relation to the interest I had in the association. My interest in the entire amount of land that was located was absolutely not controlled in any way by the number of locations on which my name appeared. My interest in the syndicate amounted to one-third of what the McDonald group profited by its membership in the syndicate, composed of the men I have named to you, and maybe some others I do not know now. I was not acting on behalf of the British-American Oil Company at this time, or making locations on its behalf. The work that I did was on behalf of my association, and not on behalf of the British-American Oil Company. It was on behalf of the syndicate.

Redirect Examination.

(By Mr. HALL.)

My father was an American citizen. He was born in Wooster, Ohio. He was qualified under the mining laws to make a placer mining location in the year 1907 and 1908.

Q. How extensive, and over what area, were these locations scattered? Just give us some idea of the extent of the country that they covered.

(Testimony of J. E. McDonald.)

A. Why, roughly speaking, they extended from some—well, now, there were some locations—this section 15, 31–22 is south [399] of McKittrick. However, the majority of these locations covered the territory ranging along the east slope of the Mount Diablo Mountains, from about 15 miles north of McKittrick to—oh, the same distance south of Coalinga. There would be perhaps a section or quarter section of ground here, and then some might be skipped, or there might be several. All along in a row.

Q. They were practically scattered all the way from the Midway to Coalinga, weren't they?

A. They were scattered, yes, but not from Midway to Coalinga. I don't know of anything that far north. I said around 15 miles south of Coalinga. I could tell pretty close from looking at your map there.

I don't remember of any locations in the Lost Hills country. I do remember of some locations in the Devil's Den country. The Devil's Den is north of McKittrick. While I was in the field my father was there. He was active in the directions about making these locations. He was to the extent of seeing that everybody was fed and housed, and so forth and so on; that is, he was up there to sort of check up that, more than anything else. He knew about the purpose of that expedition up there at that time. Mr. M. Z. Elliott was there too. Mr. Elliott was a citizen of the United States, qualified to take up placer mining locations. Mr. Elliott died about

(Testimony of J. E. McDonald.)

four years ago, and I believe he was about 38 years old when he died. I don't know where he was born. Of my own knowledge I don't know whether he was a citizen of the United States. I know that he voted.

I had a map or plat in the field while I was making these locations. I prepared it, drew it myself. I prepared it in 1907. There were markings on that plat so that I could tell it if I saw [400] it. I drew the map. I don't know where it is now. I made a tracing of it. There is probably a hundred of them by this time, blue-prints. I do not know where you could get hold of one of them.

Mr. HALL.—Have any of you gentlemen a copy of that map?

Mr. WEIL.—I have not.

Mr. PRINGLE.—I have not. I never have seen it.

I don't recall whether or not that map was designated as the map of any particular company or concern. I will explain that in this way: I made—my course in the university was that of mining engineer, and while I was in the field I made a number of pencil maps, and I made one tracing, and then later on, six months afterwards, I made one showing the approximate location of all the lands; and I have made, I guess, a hundred maps. So as to what particular date or day, or for whom the map was made, I cannot recall, unless I would see the map, and then I don't know whether I could tell you accurately.

(Testimony of J. E. McDonald.)

Q. Isn't it a fact that the map you had in the field when you were making these locations in December, or the 1st of January, 1908, read on the face of it, in substance, it was a map of the holdings of the British-American Oil Company in that field?

A. As a matter of fact, I cannot answer the question as to just what map I had in the field at that time. I know I had a map, because it was from that map I worked, but just what map it was I had in the field at that time I don't know; nor I don't recall at this time any map that had that language on it.

I got the descriptions of the particular land that they wanted to locate from my father. I don't think my father was interested in any of these lands under different locations prior to the time [401] we made the locations in question. I don't know whether Mr. Butler or Mr. Elliott were interested in those lands prior to these locations.

Testimony of Frank R. Strong, for Plaintiff.

FRANK R. STRONG, a witness called in behalf of the plaintiff, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Frank R. Strong. I reside in Los Angeles. I am engaged in the real estate business. I was living in Los Angeles in 1907, 1908 and 1909, a part of the time; I was east for about nine months during that time. I am the same Frank R. Strong

(Testimony of Frank R. Strong.)

whose name appears upon 17 placer mining locations notices which are recorded in the records of Kern County, California. My name appears upon the location notice of the Zee No. 8 placer mining claim, which embraces the northwest quarter of Section 15, the lands involved in this suit. I signed those location notices personally. I signed those location notices because we decided to go through and take up these different lands, and I was simply one of many to sign these different locations. I was representing my own crowd in it, and also the other members of the syndicate or association. I first became interested in this transaction through Mr. Dorsey and Mr. McDonald. I should say I first became interested in it some time about the middle of December, 1907. That was the first time that I heard of locating these lands. I believe it was Senator Dorsey who took the question up with me. Senator Dorsey died about two or three years ago. He died long after the location of these lands. My recollection is that [402] Senator Dorsey said that there was some open lands, some good oil lands there that could be located. He did not tell me how he knew those lands were subject to location. I don't remember that he told me that. I think he told me that he got his information as to these lands being subject to location, and as to their value as to oil lands through Mr. McDonald—Dr. McDonald. I had talked to A. H. Butler, Sr., in 1907, but not with regards to locating these lands.

Q. Well, did you at any time prior to the day the

(Testimony of Frank R. Strong.)

lands were actually located, on January 1, 1908, have any talk with A. H. Butler about these particular lands which were afterwards located?

A. Yes; one time in 1907 I talked to him.

Q. When was that?

A. I would say in the summer of 1907.

Mr. Butler did not point out to me or indicate to me whether or not there were any locations upon the land. He was talking to me then about financing a pipe-line through that territory; he only talked to me one afternoon, an hour, maybe. In that conversation he did not tell me of any lands that were open and subject to location, but simply said that he thought that would be oil territory. At that time he was president, I think, of the Dabney Oil Company up in that district. There was nothing said at that time about locating these lands. I can't say whether he told me at that time whether or not he and his associates, or he alone was interested in any locations of oil lands in this vicinity.

Q. Do you know now whether or not at that time Mr. Butler, or any of his associates, were interested in any locations upon the lands which were afterwards located by you and your associates?

A. Do I know now? [403]

Q. Yes.

A. I understand now that he had located a number of those same holdings; yes, sir.

Q. Prior to the time you made the locations, did Mr. Butler ever tell you he was interested in any of

(Testimony of Frank R. Strong.)

these lands that were covered by the locations of January, 1908?

A. I don't know that he did. His whole talk with me was about getting a pipe-line through there, and helping him finance it.

I had known Mr. Butler ever since 1886. That was just how he happened to drop in and see me.

During 1907 Mr. Butler was in New York most of the time, and also had an office in London; he was a broker. I don't know that he was a promoter. When I first knew him he was a real estate man. I imagine it was about the 20th—right along the latter part of December, 1907, that we finally determined to participate in this syndicate. There was a meeting of the various members of this syndicate in Senator Dorsey's office. Those present were Doctor McDonald and Senator Dorsey and Mr. Elliott, and I think both Senator Jones and Roy, and myself, and probably Mr. Haldeman. The first time—at that time we associated ourselves together for this common enterprise.

Q. Was there any determination reached at that time to act—this body of men—in concert and as a unity in the carrying out of this plan?

A. Not as a unity; no, sir.

Q. The lands that you were to acquire were to be divided up personally among you, or were they to be held by this association?

A. We didn't decide that right at that time.

Q. When did you decide that question? [404]

A. Well, later on it was deeded to me as trustee

(Testimony of Frank R. Strong.)

for the association, and later deeded to the British-American Oil Company.

It must have been some time in January, 1908, that it was decided to deed it to me as trustee. We made some plans in December for making these locations, when we associated ourselves together.

Q. Well, was the acting as a whole in making those plans, or were those plans just the plans of the individuals?

A. I would say they were the plans of the heads of those different groups.

Q. Well, did they all meet together and agree upon a plan, or did each one act as he saw fit?

A. Well, at this first meeting, the gentlemen I have named were there. Afterwards different ones would be there. Mr. Andrews was there several times, and Mr. Dickinson was there.

Q. That does not answer my question. Did you act as a group in carrying out these plans?

(No answer.)

Q. This association, or syndicate, which was it?

A. Well, my idea is they are the same thing, association or syndicate.

Q. And what was it?

A. Simply these different groups of people that got together. I represented Mr. Dickinson and Mr. Andrews at these different meetings, and if Mr. Jones was there he represented his father.

Q. Did you all agree as to the mode of procedure that would be pursued?

A. We had no agreement in the early part of 1907

(Testimony of Frank R. Strong.)

It was done hurriedly and we really didn't know what we were going to do. [405]

Q. Well, did you all act together in the carrying out of the plans to locate these lands?

A. We didn't act together because I put up a thousand dollars and Senator Dorsey only put up \$500, and some of the others didn't put up any.

Q. Well, you acted with different degrees of intensity. But did you, for instance—you said, "Well, I will take my group of locators and I will go and locate a certain number, and Mr. Dorsey will take his group of locators and go and make a certain number of locations," or did you simply say, "We will go out as one common enterprise and locate these lands"?

A. Well, my idea was we were to locate the lands possibly as a whole, together.

Q. And acting in this association?

A. As for the association; yes, sir.

Q. When was it finally determined that the lands should be conveyed to you and Mr. Elliott?

A. I couldn't give you the date, Mr. Hall, on that, but it was after January, 1908.

Q. Who was present when that conclusion was reached?

A. I couldn't say exactly who was present. My recollection is now that Mr. Roy Jones was there, Mr. Elliott, Mr. McDonald, and I think Mr. Andrews was there at that meeting, and myself.

Q. And was it agreed by all of the people who were there at that meeting that the lands should be

(Testimony of Frank R. Strong.)

conveyed to you and Mr. Elliott as trustees?

A. I think so; yes, sir.

Q. At that time did you know B. Adams?

A. I don't know B. Adams; no, sir.

Q. Did you know A. W., N. G., or W. P. Casey?

[406]

A. One of them that was on the stand this morning?

Q. Yes. A. I don't recollect Mr. Casey.

Q. Did you know Wallace D. Dickinson?

A. Yes, sir.

Q. Was he present? A. No, sir.

Q. Was L. B. Dorsey present? A. No, sir.

Q. Was O. C. Gebauer present? A. No, sir.

Q. G. A. Horn present? A. No, sir.

Q. F. J. Haldeman present?

A. I think Mr. Haldeman was.

Q. That is Mrs. Haldeman, the wife of George C. Haldeman?

A. No; Mrs. Haldeman was not there.

Q. Addison C. Macon, was she present?

A. No, sir.

Q. Henry L. Musser present? A. No, sir.

Q. H. R. McDonald present? That is, Helen R. McDonald? A. No, sir.

Q. J. E. McDonald. Was he there?

A. No, sir.

Q. Albert G. Shaw? A. No, sir.

Q. Was Warren F. McGrath there?

A. No, sir.

Q. Did any of the persons whose names I have

(Testimony of Frank R. Strong.)

just read to you, [407] either verbally or in writing, direct you to receive the title to this property in trust, other than such declaration as may be implied from the deed which was actually executed?

A. That was all; they executed the deed.

Q. There was no conversation between you and them as to this conveyance to you?

A. When it was signed?

Q. No. I mean outside of the actual instrument itself.

A. I might have spoke to Mr. McGrath and Miss Gebauer and Mr. Wallace Dickinson, probably.

Q. Was there any explanation given by you to any of these people as to your trusteeship, or what it should consist of? A. No, sir.

Q. Did you ask any of these people outside of possibly Miss Gebauer and Mr. McGrath to designate or nominate you as their trustee in this deed?

A. No, sir.

Q. Was there any person outside of the persons present at this meeting who determined, or assisted in determining that the lands should be conveyed to you and Elliott as trustees? A. No.

Q. Did you, yourself, or did Mr. Elliott in your presence, make any declaration of your trusteeship to these people who conveyed the lands to you?

A. I never made any declaration. You mean in writing, Mr. Hall?

Q. Either in writing or verbally.

A. Well, the crowd was there. It was simply un-

(Testimony of Frank R. Strong.)

derstood we were holding it according to our original understanding there.

Q. Now, what was your original understanding?
[408]

A. That Mr. Butler had a fifth of his people. The rest of us was divided into one-fifth of four-fifths.

Q. When was that understanding reached?

A. Oh, that was early when we first began to put up the money.

Q. Was that before the locations were made?

A. Yes, sir.

Q. Were any of the others outside of the members of this so-called association consulted about the division of this property that you have just mentioned?

A. These locators?

Q. Yes. A. No, sir.

Q. Were these locators consulted in any way by you or your associates, that you know of, as to what would become of the rights they had in the lands under this division?

Mr. WEIL.—One minute. In view of the fact that all of these witnesses—that is, certain of these locators have testified that they had no personal interest in there but were acting as agents on behalf of the association, I think it is a rather violent assumption, and a fact not in evidence, when counsel refers to their personal interest in land.

The COURT.—He may answer the question.

A. Will you repeat the question?

(Last question read by the Reporter.)

A. No.

(Testimony of Frank R. Strong.)

Mr. WEIL.—Now I would like to know which locators you are referring to.

Mr. HALL.—I am referring to B. Adams, A. W. Casey, N. G. Casey, W. P. Casey, Wallace Dickinson, L. B. Dorsey, O. C. Gebauer, G. A. Horn, F. J. Haldeman, Addison C. Macon, Henry L. Musser, Warren F. [409] McGrath, H. R. McDonald and Albert Shaw.

A. No, sir.

Q. What factor or factors determined this division of these lands? A. Why, Mr.—

Mr. WEIL.—Now, one moment. There was no division of the lands agreed on.

Mr. HALL.—Well, the interest in these lands.

Mr. WEIL.—There were undivided interests there.

Mr. HALL.—All right.

A. Mr. McDonald brought it, I understand, to Mr. Dorsey, and said that Mr. Butler demanded a fifth of whatever was done with these locations.

Q. What factor or factors determined the interests of the other parties in these locations?

A. The other parts were simply divided up amongst the different groups equally.

Q. Was the fact that some of you had put up money a factor which determined how much the different interests should be?

A. No, sir; that money was to be returned.

Q. How much money did you put up?

A. I first put up \$233, I think, the first check.

Q. And then the next check?

(Testimony of Frank R. Strong.)

A. That was in December, 1907. Then I made up enough to make it \$333 early in January. Mr. Andrews, Mr. Dickinson and myself put up a thousand dollars total.

Q. As I read this list, will you tell me how much each one of these persons put up, how much money to carry through—

A. As nearly as I can. [410]

Mr. WEIL.—Now, one moment. We object to that as immaterial, irrelevant and incompetent how much money anybody put up. I don't think the determination of the people's rights under the Government of the United States is governed by the amount of money they are able to put up, Government counsel to the contrary notwithstanding, and I submit that a man who has no money has as much right to locate on the public lands as a man who is a millionaire, and I therefore object to that as entirely irrelevant to this case.

The COURT.—It would have no relevancy except that it might show the relationship between these people, and whether they were to share in this property.

Mr. WEIL.—It is admitted that these people were merely acting as agents and had no interest in it.

Q. (By Mr. HALL.) B. Adams?

A. He put up no money that I know of.

Q. He put up no money? A. No.

Mr. PRINGLE.—That he knows of.

Mr. HALL.—All I want is the truth.

Mr. PRINGLE.—Not the truth, but all he knows.

(Testimony of Frank R. Strong.)

Mr. HALL.—Yes; all he knows and everything he knows. I am perfectly willing the Court should have it.

Q. Lewis W. Andrews? A. Yes, sir.

Q. How much?

A. Well, he put up a third of that thousand dollars, in two payments, I believe.

Q. A. W. Casey? A. No. [411]

Q. N. G. Casey? A. No, sir.

Q. W. P. Casey? A. No, sir.

Q. Wallace D. Dickinson? A. No, sir.

Q. You said, "No, sir." Do you mean that you don't know, or that they did not put it up. Please indicate.

A. I am pretty sure those people did not put it up.

Q. And George W. Dickinson? A. Yes, sir.

Q. He put up how much?

A. The same as Mr. Andrews and myself.

Q. And Stephen W. Dorsey. How much did he put up? A. I think \$500.

Q. L. B. Dorsey. How much did she put up?

A. I don't know.

Q. M. Z. Elliott. How much did he put up?

A. I don't know what Mr. Elliott put up.

Q. Do you know whether or not he put up anything?

A. Well, I think he might have afterwards. He was doing field work at the time, so we didn't—

Q. O. C. Gebauer? A. No, sir.

Q. What? That she did? A. She did not.

Q. She did not. G. A. Horn?

(Testimony of Frank R. Strong.)

A. She did not—he did not.

Q. George C. Haldeman?

A. He did not. [412]

Q. F. J. Haldeman? A. He did not.

Q. That is Mrs. Haldeman.

A. She did not put up any money to my knowledge.

Q. Addison C. Macon. Did she put up any money?

A. No, sir.

Q. Henry L. Musser. Did he put up any money?

A. No, sir.

Q. Warren F. McGrath. Did he put up any money? A. No, sir.

Q. H. R. McDonald. Did she put up any money?
That is Helen R. McDonald.

A. Not to my knowledge.

Q. Did J. E. McDonald put up any money?

A. No, sir.

Q. Did Albert G. Shaw put up any money?

A. No, sir.

Q. Did William Z. McDonald put up any money?

A. I don't think any of the original money; he was also doing the field work.

Q. Did Roy Jones, or his father, Senator Jones, put up any money? A. Yes, sir.

Q. How much did they put up?

A. Close to a thousand dollars.

Q. Is it or is it not a fact, Mr. Strong, that the interests of these several groups in the lands involved was determined partially by the work and labor which they had done in getting this association or

(Testimony of Frank R. Strong.)

syndicate organized and in existence, and partially by the amount of money which each one of you put up [413] to further the interest of the association or syndicate?

A. It was not by the money because we put up a third of that original \$2,500 and we only got an eighteenth of the holdings.

Q. I want to refresh your memory. Do you remember that you were sworn as a witness before George S. Welch, a notary public? A. Yes, sir.

Q. In Los Angeles on October 19, 1911, in the suit of the British-American Oil Company vs. the Pioneer Midway Oil Company.

A. I do. I have read that deposition.

Q. You have read this testimony?

A. Yes, sir.

Q. I want to refresh your memory by reading you some questions that were propounded to you by Mr. Henry Ach, who represented the Pioneer Midway Company, and your answers to them.

A. Yes, sir.

Mr. HALL.—I read you these questions, and I want you to follow me closely.

Mr. WEIL.—Please show them to him.

Q. (By Mr. HALL.) Yes; I will let you read them as I read them (reading):

“Q. Well, what was the trust upon which you held that deed, or took that deed?

“A. Why, it was simply to deed it to us, and we was going to formulate some plans later on

(Testimony of Frank R. Strong.)

and act on them. We had no regular agreement with them.

“Q. Well, but what was the trust that you held it upon?”

“A. We held it for the other locators that were in there.

“Q. In what proportions?”

“A. In the proportion to the amount which they put up, their money, the different ones.”

Now, after reading that, another question (resuming reading):

“Q. Had anybody put up any money at that time?”

“A. That was my understanding.

“Q. Had anybody put up any money at that time? A. Yes.

“Q. At that date? A. Yes, sir. [414]

“Q. Who?”

“A. Mr. Elliott, I think, Mr. Andrews, Mr. Jones, and Mr. Dorsey and Mr. Dickinson.

“Q. Who did they put it up with?”

“A. Well, the money was turned over afterwards to Mr. Elliott.”

Now, does that refresh your memory in any way as to whether or not the amount of money that was put up by these various people in the association controlled the interest which they were to receive in these lands?

Mr. WEIL.—To which the defendants object for the reason that it is irrelevant, immaterial and incompetent, and an apparent attempt on the part of

(Testimony of Frank R. Strong.)

counsel for the Government to impeach his own witness.

The COURT.—He may answer.

Mr. WEIL.—We save an exception.

A. No; it does not. If I may explain something there, I would like to do it. At that time, in 1911, I was probably as busy as anybody in Los Angeles. We were subdividing and selling anywhere from thirty to forty lots a day. Mr. Ach came down from San Francisco and suddenly called me up to some office; I forget where it is now. I had no time really to look up the data. I had not discussed it thoroughly, and of course now I have since this case has been coming up. For two months, I guess, or three months, I have been refreshing my memory and scouring it up, and I really am clearer now a great deal than I was at that time. I have read all of those depositions of Mr. Elliott's and Mr. Halde-
man's. In fact, I guess the same copies that you have there. I have also talked with Mr. Jones; I have talked with Mr. Dickinson; we have gone back through our old files and looked up a few old letters we had, and in a general way given it a lot of thought. I have discussed it only shortly with Mr. Andrews, who is our counsel in this case.

Q. (By Mr. PRINGLE.) He is your associate as well as your counsel? A. Yes, sir. [415]

Mr. Andrews is a director of the British-American Oil Company at this time. I think Mr. Elliott prepared this deed of March 4, 1908, between the locators and myself. I did not.

(Testimony of Frank R. Strong.)

Q. And as I understand you, there was never any written or verbal declaration of what your trusteeship was? A. No, sir.

There was no actual consideration from me to the locators for this deed. We held the title in our names as trustees until May 4, 1909, when the deed was made between myself and M. Z. Elliott as trustees to the British-American Oil Company. We did not convey the land to the British-American Oil Company sooner because I was East pretty nearly all of that time. I came back about March or April, 1909, and I believe that deed was made to the British-American Oil Company just after I returned from the East. I had been absent for about 9 months. I might have been present, but I don't remember, when it was determined that Elliott and I should make this deed to the British-American Oil Company. I do not know how it was determined to put the land into the corporation. I imagine it was simply to take it out of our hands as trustees. We were holding it for the stockholders then of the British-American Oil Company; and we had held it for them ever since the time the land was deeded to us. I do not remember who specifically directed me or who instructed me to make this deed. At the time I made the deed I did not consult with any of them as to whether or not they were willing that I should make the deed.

Q. At the time you made the deed, did you consult with any of the locators who were not stockholders in the British-American Oil Company, as to your

(Testimony of Frank R. Strong.)

right to make the deed? A. No, sir.

Q. And do you know whether or not Mr. Elliott made any such inquiry, or had any such discussion with these people in your presence? [416]

A. Well, my recollection is that Mr. Elliott originally got the deed executed by practically all of the locators; not myself.

Q. But when you and Mr. Elliott came to deed over to the British-American Oil Company, do you know whether or not Mr. Elliott inquired of the original locators, who were not stockholders of the British-American Oil Company, if he and you might have their consent to make this deed to the British-American Oil Company? A. No; I do not, no, sir.

Q. Well, whose consent did you then consider was necessary for you and Mr. Elliott to get to make this deed to the British-American Oil Company?

A. If I remember right, Mr. Elliott brought the deed to me at the time. Of course I knew I was holding it for—he was also president of the British-American Oil Company at that time. I was simply a director, and it was being deeded, of course, to the corporation which I was interested in, and I had simply signed it with that understanding to convey the property to them.

Q. Well, who were you acting as trustee for in that conveyance?

A. I considered I was acting as trustee for these people, Mr. Andrews, Mr. Dickinson, Mr. Dorsey, Mr. McDonald.

Q. In other words, you were acting as trustee for

(Testimony of Frank R. Strong.)

the persons who were then stockholders in the British-American Oil Company?

Mr. WEIL.—Now, one moment. They were not stockholders at that time.

A. That is what I was going to say.

I didn't consider I was holding it at all for any locators that were not—I didn't consider them at all in this transaction. I was simply considering the people who belonged to this association. And those people were the same people who would become stockholders of the British-American Oil Company when the stock should be issued. The members of this association were simply holding this empty shell known as the British-American [417] Oil Company for the purpose of distributing the stock after these lands were conveyed to it. The deed from the trustee to the British-American Oil Company was on March 4, 1909, and the stock was not formally issued until 1910.

The COURT.—There was a meeting of the purported stockholders in 1908.

Mr. HALL.—Yes.

The COURT.—A meeting of Dorsey, Elliott, McDonald and those people.

Mr. HALL.—Yes. And I think those people were the heads of the various groups, as I understand it.

The COURT.—Yes.

I accepted this deed of March 4, 1909, as a trustee for heads of this association. They were practically the same people who were then interested in the British-American Oil Company. Since that time I

(Testimony of Frank R. Strong.)

have not rendered any account of the trusteeship to B. Adams, A. W. Casey, N. G. Casey, W. P. Casey, Wallace Dickinson, L. B. Dorsey, O. C. Gebauer, G. A. Horn, George C. Haldeman, F. J. Haldeman, Addison C. Macon, Henry L. Musser, Warren P. McGrath, H. R. McDonald, or Albert G. Shaw. I have not rendered an account of my stewardship in this matter to anybody.

Cross-examination.

(By Mr. WEIL.)

Prior to the date of these locations, and in December, 1907, this association was formed for the purpose of making the locations. This association consisted of six groups. The heads of these groups each represented a number of other persons who were members of other small groups. When I said I was trustee for the heads of the groups I meant I was trustee for all of the interested parties. Before the lands were located, in December, 1907, the respective interests of the parties were determined. Butler had demanded a fifth interest, and the other groups divided equally what was left. That was the only understanding that governed the division of the interests there. Butler insisted on a fifth and the rest divided equally what was left. That division was made regardless of the amount of money they put up, and regardless of the number of location notices which [418] they signed. There was no agreement made prior to the locations that they should be conveyed to me as trustee. There was no agreement made prior to the locations that they should be

(Testimony of Frank R. Strong.)

conveyed to a corporation. There was no agreement at all in reference to the disposition of these lands, either written or oral, or any understanding of any kind, other than that the locations were for the benefit of the association, and that the assessments should be divided amongst these groups in the manner in which I have already indicated. It was understood that Mr. Elliott and I should hold these lands in trust for the benefit of the association in the same proportions that had been agreed upon prior to the locations. I never claimed these lands individually because they had been conveyed to me. Mr. Elliott never claimed them individually. Both Mr. Elliott and myself always considered that we held these lands for the beneficial interest of the association. The money that was advanced by different persons, myself and the members of my group, was repaid. It was understood that that money should be repaid out of the first money that was received. The money that was advanced by the members of the association was merely a loan to the association. It came back to us without interest.

Redirect Examination.

(By Mr. HALL.)

Q. In this division of December, 1907, were you to divide up the lands specifically and each group handle a portion of the lands as it might see fit, or were you to handle it as an entire group of lands?

A. We talked at one time that we might possibly drill a piece of land a piece, but not divide the land up. [419]

(Testimony of Frank R. Strong.)

Q. It was all to be held in common, was it?

A. That is what I understood.

Q. Did the members of this association or the British-American Oil Company ever drill for oil upon any of these 207 locations?

A. They never drilled. Part of this crowd did put up a derrick and got ready to drill at one time, but we never did drill.

Q. You never had drilled on any of it? A. No.

Recross-examination.

(By Mr. WEIL.)

Of these 207 locations, three quarter sections were finally really owned by the British-American Oil Company as being oil land. The British-American Oil Company was instrumental through making leases, in drilling these three quarter sections. We put up a derrick on one. These three quarter sections have been drilled for the British-American Oil Company, and oil discovered on them. These three quarter-sections are all the lands that the British-American Oil Company now claims.

Redirect Examination.

(By Mr. HALL.)

At one time we did claim other lands, and those lands have since proved to be oil lands. We located some other lands that afterwards proved to be oil lands. But we lost them through litigation and by jumping. We only had one lawsuit. At this time we claimed all of Section 30, which was developed by the Pioneer Midway Oil Company. And we only

(Testimony of Frank R. Strong.)

claim three quarters [420] of this section 15. We claimed one quarter in Section 4. I don't know whether that turned out to be oil land or not.

Testimony of A. W. Casey, for Plaintiff.

A. W. CASEY, a witness called on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is A. W. Casey. I reside in Glendora, California. I am a lemon rancher. I resided near Los Angeles in 1907, 1908 and 1909. At that time I didn't have any steady, regular employment. At one time, for a very short time, I was employed by Dr. McDonald, but that employment did not last. I was not busy, and he asked me if I had anything to do, and I told him no, and I went into his offices; it lasted about a month, a little over a month. I can't tell you the month; it was in 1907. I suppose I am the same A. W. Casey whose name appears upon 36 notices of location of placer mining claims recorded in Kern County, California. I had forgotten that I was a locator until recently so informed. I don't recall that I actually signed the location notices myself. In order to give you the circumstances under which my name came to appear upon those location notices I would have to explain a little my connection with the office. This employment that I speak of was for a very short time, and later I took offices with Dr. McDonald and had a desk there for some months; and during that time there were certain

(Testimony of A. W. Casey.)

location notices came into the office, and later in the year, as I recall, it was desired to re-locate in order to save the expiration. I don't know who owned them, but Dr. McDonald had charge of them in the first instance. [421] I could not recall the description of the lands that were covered by these locations without seeing some of the documents. I went over all of them and checked them off at that time, to aid in identifying them.

Q. When you say they came into the office, will you please explain to the Court what you mean by that?

A. I think they were brought to Dr. McDonald by a party or parties who were either unable to produce sufficient money to carry them on—as I remember it they were unpatented—or to provide funds for development. Whatever it was, it was the ordinary course of taking locations and developing them, and they were brought to Dr. McDonald to finance in some way.

Dr. McDonald had been in the real estate business and was taking up oil. That was how I came to be connected with him; he wanted some assistance in the matter. I suppose he was what you would call a promoter in that line of work, although that word was not used.

Q. Well, did those locations, or the lands embraced in those locations,—afterwards were they included in these locations which you appeared upon as a locator?

A. I suppose so. As I said, I do not recall my

(Testimony of A. W. Casey.)

being a locator, but if the record has it so, I take it that I was.

Q. Did you have any conversation with Dr. McDonald in regard to making any of these locations?

A. I don't think I understand the question. They were already made when I saw them. I don't recall in whose name they were at this time, and then it was desired to relocate them or locate them over again, and of course there was considerable talk about them in the office. [422]

Q. Who was doing that talking about relocating them or locating them over again?

A. I would say Dr. McDonald, and there were others in the office, coming in from time to time.

Q. Do you remember any of the other persons who came in to talk about these matters?

A. I had forgotten all of the names, but lately several names were brought to mind, and some of them I cannot repeat now. There was, I think, a Mr. Elliott; there was a Mr. Cole associated with Mr. McDonald in the first instance, but he dropped out of the matter.

Q. Did you know Mr. A. H. Butler, Sr.?

A. I think it was Mr. Butler who originally had the locations.

I do not recall Mr. Thaddeus. I did not know Senator Stephen W. Dorsey in connection with them. I don't recall Mr. Strong. I might have seen him or known him, but I don't recall Mr. Strong. I don't recall Mr. George W. Dickinson. I don't recall Mr. Lewis W. Andrews in connection with these

(Testimony of A. W. Casey.)

locations. I might have been asked by Dr. McDonald or someone to assist in the relocation of these lands, but I don't recall how I came to be connected with them, except as a general matter of good will to assist in the relocation. I did not have any personal interest in these 36 locations which appear of record in Kern County. I do not now recall that I intended to claim any interest in the lands covered by these locations, except as I was associated with Dr. McDonald in the way I have described. I was not a partner in any way. I had no interest in those lands at that time and did not claim any interest in them. I have never claimed any interest in any of those lands.

Q. Well, can you tell me what was in your mind when you signed [423] those location notices, if you did sign them, or what was in your mind if you permitted the use of your name in the making of those locations?

A. It would be pretty difficult to recall what was in my mind 11 years ago. I can only say it was probably because of my acquaintance and association with Dr. McDonald in the way I have described, and as a friendly association and assistance. If it was called for, I suppose I would—I know I would.

Q. Do you now recall that you had any intention at that time to locate on any of these lands and to claim any interest in them after they were located?

A. No, sir.

I don't recall a deed from myself and 21 other persons conveying to Frank R. Strong and M. Z.

(Testimony of A. W. Casey.)

Elliott as trustees these 207 claims. I might have made it, but I don't recall anything about it. I do not remember of having received any compensation or anything of value for making that deed. I do not recall that I had any talk with Strong or Elliott about the making of that deed. I am satisfied that Strong and Elliott did not make any declaration of the trusteeship which is supposedly described and created. I did not know anything about the deed from Elliott and Strong to the British-American Oil Company in May, 1909. I was not consulted in any way by any of the parties in regard to it.

N. G. Casey is my wife. I do not remember that Mrs. Casey's name appears upon any of those location notices, except that her name has been mentioned just now. I have no recollection that her name was used, but she might have consented to the use of her name, or it might have been used because other names were required, but I don't recall, and did not recall until just now—I don't recall it now; I don't know it as a fact. I have transacted Mrs. [424] Casey's business generally and have been thoroughly familiar with her business transactions. I have been familiar with what her interests are in different things. I have never known of Mrs. Casey, for herself or through me as her agent, making any claim to any of the lands covered by these locations on which her name appeared. I know she has not received anything of value by reason of the fact that her name was used upon these locations. Neither

(Testimony of A. W. Casey.)

Mrs. Casey nor myself now claim any interest in any of those lands.

Q. When this matter was brought up in the office of Dr. McDonald, did you ever hear of any association that was to be formed to handle these lands?

A. Well, as to that, I would have to make a little explanation, if it is proper. As I told you, there was a Mr. Cole, as I remember the name—

Mr. WEILL.—I prefer to have the witness answer the question. Read the question to the witness.

Mr. HALL.—Read the question, and listen to the question and give us an answer; and if you desire to explain, I will ask permission of the Court that you may later.

(Question read.)

Mr. HALL.—Now, you may answer that, if you can, yes or no, Mr. Casey.

A. Well, I would say qualifiedly no.

I can't say I did not hear anything about what was to be done with the lands at this time. There might have been conversations as to what was to be done with the lands. I do not recall anything that I heard.

Q. Did you hear of any company or association or syndicate being named in connection with these lands? [425]

A. It is difficult to answer that question. There were people coming from time to time to Dr. McDonald's office in consultation about these lands. Some of them I met. I had some knowledge of Dr. McDonald's business. There were some things I

(Testimony of A. W. Casey.)

had no knowledge of. Subject to that, I can say I had no knowledge of an association.

I do not recall Senator Jones in connection with these lands. Neither Mrs. Casey nor myself have ever been stockholders of the British-American Oil Company or the North Midway Oil Company. There was a company, the name I am not familiar with, in which a number of people were named as directors or as incorporators, and I cannot tell you the name of that company. I was not a director of the British-American Oil Company. I suppose I was one of the incorporators of the Dabney Oil Company. I can't recall just the connection at the present time. I attended a meeting afterwards.

Cross-examination.

(By Mr. WEIL.)

I do not recall that Dr. McDonald operated rather extensively in oil in Ventura County as well as in the Midway. Some of these things are very clear in my mind. I remember clearly I had no financial interest in these locations, and that when I became a locator I was doing it in someone else's behalf. I don't recall anyone in whose behalf I was doing it, except Dr. McDonald and some of the people that I saw come to the office. I knew he had some associates. I recall a Mr. Elliott and Mr. Butler. The names, of course, are difficult to recall, but there were several gentlemen came in and were in consultation from time to time about these oil lands. I would not know how to define the relation in which

(Testimony of A. W. Casey.)

I was acting on behalf of Dr. McDonald and these other [426] gentlemen in this matter.

Q. Well, of course, I take it you were not intending to perpetrate any fraud on the Government of the United States.

A. Not in the least.

Q. No. A. No, I would have resented that.

Q. And therefore you must have realized you were acting as a representative or as an agent, and not with the idea of helping anybody defraud the Government. A. Not at all.

Q. That was not your purpose? A. No, sir.

Q. You are quite sure you had no such intent in your mind. A. Why, certainly.

Q. And therefore you must have been acting as the agent or representative of someone in doing these locations, as you do not claim any interest in them yourself, do you?

A. I have a difficulty in saying that I acted as a representative or agent for anyone. There seems to me to be an inference. I do not recall just what the results would have been so far as Dr. McDonald was concerned. I suppose if he had succeeded in a large degree, there might have been some result to me.

There was no agreement at that time for any interest to come to me.

Testimony of Roy Jones, for Plaintiff (Recalled).

ROY JONES recalled.

Direct Examination.

(By Mr. HALL.)

The incorporators of the North Midway Oil Company were George C. Haldeman, Frank R. Strong, M. Z. Elliott, L. W. Andrews and Roy Jones. It was incorporated November 8, 1909. The stockholders [427] were as follows: May 15, 1911, I find a certificate No. 1, issued to the estate of M. Z. Elliott for 1000 shares; and No. 2, on May 15th—I can't make out whether that is 1,500 or 1,000; it is blotted. The stockholders were M. Z. Elliott, W. Z. McDonald, John P. Jones, Frank R. Strong, Lewis W. Andrews, George W. Dickinson, Roy Jones. That is all in the original issue. They continued to be stockholders for a number of years. I do not find any changes in the stock ownership until 1914. That is when some of the stock was issued to the Ramena corporation; that is my [428] father's estate corporation. The stock held by my father in the North Midway Oil Company was held in his name until the time of his death. The Ramena was the holding corporation for his estate, and it was transferred to that. That was true of my father's stock in the British-American Oil Company. The 3990 shares of stock in the British-American Oil Company were held in my father's name until the incorporation of the Ramena. Ten shares of stock stood in my name, simply for the purpose of qualifying me as a director. The balance of the stock, the 3,990 shares, re-

(Testimony of Roy Jones.)

mained in my father's name up until the incorporation of this company which was incorporated to take over the estate of my father and manage it.

I think Senator Dorsey died some time in 1916. Senator Dorsey was not a stockholder in the North Midway Oil Company, but he was in the British-American Oil Company. Lewis W. Andrews became a stockholder in the British-American Oil Company on March 12, 1910. The date of this certificate is March 12, 1910. It was issued for 1,064 shares. The stock book shows that he still owns them. Neither A. W. Casey, nor N. G. Casey, nor W. P. Casey were ever stockholders in the British-American Oil Company. Wallace D. Dickinson was never a stockholder in that company. George W. Dickinson became a stockholder in the British-American Oil Company on March 12, 1910, when a certificate for 1064 shares was issued to him. Those shares of stock still stand in the name of George W. Dickinson. Stephen W. Dorsey became a stockholder on March 12, 1910. A few days thereafter I believe on March 18, 1910, 192 shares of Senator Dorsey's stock were issued to F. J. Haldeman. The next change in Senator Dorsey's stock was March 20, 1914; all of his remaining shares were cancelled at that time. I think my father bought his stock before that time, but it was not cancelled [429] until then. He simply endorsed his stock to us. It was some time before we had it reissued. I think the certificate will show when my father bought it. I was quite sure that it was earlier than that that we

(Testimony of Roy Jones.)

bought it, because it was bought in my father's lifetime, I know. It was not transferred until after my father's death, and I see it was transferred here from the estate. It was endorsed in blank to us originally, and we held it some time, and then they filled in the estate; it was issued to the Ramena corporation when it was finally issued. Senator Dorsey transferred all of his stock to my father at that time. I think he had 3,000 shares at that time. That was after the reduction of the capital stock.

Q. L. B. Dorsey, was she ever a stockholder in the British-American Oil Company?

A. I always understood that she was a joint owner with Dorsey of this stock that was issued in his name.

Q. Well, do you find anything in your records to indicate that Mrs. L. B. Dorsey was the owner of any shares of stock in the British-American Oil Company?

A. Only from what Senator Dorsey told me from time to time; nothing in the record.

M. Z. Elliott was a stockholder in the British-American Oil Company. He became a stockholder on March 10, 1910, and he had 3,192 shares. On March 12 they had a reissue of stock. It was cut up and split into different certificates. I think it was reissued to him again, but he had it split up differently. Yes, he had a 1,000 certificate, and one certificate for 192, turned in, 1,192 turned in, and had two certificates issued for 596 each. In March, 1911, he turned in 1,596 shares, and I will tell you in a [430] moment to whom they were reissued. One thousand

(Testimony of Roy Jones.)

five hundred shares were issued March 4, 1911, to Mrs. Jennie M. Davis; that was the wife of W. J. Davis, his partner. And 46 shares were issued to Jennie M. Davis. Mr. Elliott continued to hold the remainder of his stock until his death. He died four or five years ago. Mrs. Davis does not own the 1,146 shares that were issued to her. I think Mr. Walton bought that stock. Miss O. C. Gebauer has never been a stockholder in the British-American Oil Company. Neither has G. A. Horn. George C. Haldeman was never a stockholder in the British-American Oil Co. The stock stood in Mrs. Haldeman's name. Neither Addison C. Macon, Henry L. Musser, Warren F. McGrath, H. R. McDonald, J. E. McDonald, nor Albert G. Shaw ever owned any stock in the British-American Oil Company. Frank R. Strong was a stockholder. The original issue to him was made on March 12, 1910, 1,064 shares. Mr. Strong still owns it.

Cross-examination.

(By Mr. WEIL.)

I testified when I was on the stand before that I owned a half interest in what belonged to my father's group. He owned half and I owned half. In the summer of 1908 I was taken quite ill and went to San Francisco to a specialist, and was sent to Europe. I had to quit work, and had a pretty expensive trip, and got to owing considerable money to my father and other people. And along in the fall of 1909, when they began very active talk about putting up a large amount of money to develop this thing, that

(Testimony of Roy Jones.)

they were going to put up a good many thousand dollars apiece, I thought it the part of wisdom to sell out my interest, and I did sell it out to my father. I cannot tell you exactly what I got for it. I tried to look up my memorandum, and I cannot find it, because my [431] father and I did business rather informally one with the other. But I owed him quite a good deal of money, amounting at that time to—oh, between two and three thousand dollars, I have forgotten just how much it was. I remember also there was a small automobile, one of the old-fashioned Hup automobiles involved in the thing. Anyhow we had a general square-up of that, and squared up accounts, and I squared up my accounts, and turned that British-American over to him. That was before the stock was issued, along about 1909, before the organization of the Midway. That was why I did not go personally into the Midway, because I did not have the money to put in it. From that time until my father's death I was acting really in my father's behalf. I stayed there simply to take care of him. I had no further interest in the corporation,—never had until I inherited from him.

The North Midway Oil Company was incorporated because we were not getting rapid enough action to suit most of us on the thing, especially my father and Mr. Strong and his group, and some of those people who had money and wanted to go ahead and push the thing faster than it was being pushed; and we could not get very rapid action for the reason that Dorsey was away a great deal of the time,

(Testimony of Roy Jones.)

and Mr. Butler was in Europe a great deal of the time. So that we decided that those of us who had the money and the inclination would go ahead and drill, and that we would issue from the British-American a lease, leaving all those in interest—we did not want to cut out those in the British-American, even if they did not put up; we would leave them with a margin between the royalty we paid and the royalty—that is, we would leave a margin in favor of them, that is, we would pay a royalty sufficient so that there would be something in it for [432] the British-American; that is my point. So that we leased originally to Mr. Dickinson, and then afterwards formed the Midway for all of those who wanted to come in of the original British-American stockholders. We held the thing open quite a long while, to see who would come in and who would not. Well, it was arranged in the summer of 1909, about the time that we were urged to get active. Mr. Elliott especially was coming to every meeting and begging us to go to work and drill, and most of us wanted to drill, but we were hanging back because Dorsey and Butler were not available, were not there. The purpose of this new arrangement was to permit the people who were ready and able and willing to put up the money to go ahead and drill. The British-American gave a lease to Dickinson.

Q. Now, by referring to the minute-book of the British-American, you will notice that lease to Dickinson was authorized at a meeting held on September 27, 1909. Had that plan been arranged for prior to

(Testimony of Roy Jones.)

the actual authorization of the lease?

A. We had been talking it over for some time.

Q. Had you taken any actual steps to consummate the business before that time?

A. To consummate what business?

Q. Going ahead with this project.

A. Oh, yes; we had already gone to work and taken active steps. We had authorized Elliott to go ahead and prepare to drill, and get the stuff to drill with, and all that sort of thing.

Q. About when was that?

A. That was either the latter part of August or early in September, I think.

Q. If I may be permitted to refresh the witness' memory by [433] some proof we will subsequently put in, we will show certain lumber was purchased and put upon the land around the 17th of September, 1909, by the King Lumber Company. Was this arrangement of yours or the North Midway, rather, to develop this land, arranged for prior to that date? A. Yes.

Q. And was the ordering of this lumber a part of that project? A. It was.

This drilling plan was left open. Several agreed to come in, and there were others who tentatively might come in, and we fiddled around a long time, waiting to see who would come in and who would not. But we knew my father would come in. I think he agreed to put in \$5,000, and then if they needed more he would come through again, but that was the original proposition, but he was to stay with it, whatever

(Testimony of Roy Jones.)

they did, to stay with it. I think Strong, Dickinson and Andrews all agreed to put up \$5,000 each,—not for their group interests, but each to come in for five thousand, if I am not mistaken. Elliott, and I think McDonald were to come. This lease to Dickinson that was authorized on the 27th of September, 1909, was authorized in pursuance of this plan that we had previously worked out to develop this property with a subsidiary corporation. We were going ahead and incurring expense, and we wanted to have something definitely understood so that we would know where we were. This lease was not for Dickinson's individual benefit. He simply held it. I can explain about the 50 shares of stock that you say were issued to a man named Frank H. Hudson. I had forgotten that. It is a fact that 50 shares were issued to Frank Hudson. I think he was promised that for some work he did by M. Z. Elliott, and [434] M. Z. Elliott asked us to come through and make good what he had promised, if I remember the thing correctly, and we did. The stock was divided after the deduction of these 50 shares.

Q. And another matter I don't understand, and perhaps you can explain, is this offer that was made by Strong and Elliott, the trustees, to the British-American Oil Company at the meeting of February 3d. I take it that this offer was all just framed up there at the time of the meeting, was it, so as to put the thing into legal shape?

A. I think they brought in a tentative sketch of an agreement.

(Testimony of Roy Jones.)

Q. Now, I see some reference to 640 acres of land that was to go to some five individuals, to the directors. What were the circumstances under which that occurred?

A. Well, we talked that proposition over when they were talking about what they would do with the land. They were then talking, you know, about the corporation acquiring the land, and there had been a certain amount of dissatisfaction in the division, because they thought Butler should have gone in on level terms with the rest of us.

Q. Butler having gotten a fifth?

A. Butler having gotten a fifth, while the rest of us only got a fifth of four-fifths. And it was suggested Butler might be made to come through to the extent of equalizing the thing up more or less. That was part of the reason, and another reason was—

Q. One moment, before you give the other reason. Then I understand this 640 acre proposition here that was referred to was for the purpose of equalizing the interest.

A. That was the original idea.

Q. Would that approximately equalize the interest?

A. Very close to it, yes. It was not figured out very accurately. [435]

Q. Was this plan ever carried into effect?

A. No.

Q. This was a proposition that was put up and passed, and dropped, was it?

(Testimony of Roy Jones.)

A. Yes, it could not have been carried into effect without Butler's O. K. Butler was away at the time, and I believe Butler strenuously objected when he came back.

Q. Butler never O. K.'d it? A. No.

Testimony of Roy Jones, for Defendants.

ROY JONES, a witness called on behalf of defendants, having heretofore been duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

This lease was made to Dickinson in pursuance of a plan that had already been arranged and was being carried into effect. This meeting of September 27, 1909, which authorized the lease to Dickinson, was merely carrying out formally what had already been done in practice; we had gone ahead and waited for these different people to signify what they were going to do, and we had gotten so far by that time we thought it was time we got a little something on paper. I don't think the money was put up for the purpose of drilling this well. We just all said we stood ready to put it up. It must have been subscribed—let me see—it must have been \$25,000, I guess. I never figured it out, but I think it was that much, about that. My father was to put up, I think, \$5,000 of it, and as much more as he would be called on, *pro rata*; and Strong, Dickinson and Andrews were each to put up \$5,000, and I think McDonald and Elliott were going to put up—I think McDonald

(Testimony of Roy Jones.)

[436] first of all said he would agree to put up \$2,000, if I ain't mistaken, and said he might come through with some more. And that is one reason why we waited around, to see what the proportionate interests would be, to see how they would come in and what they would do.

Q. Now, the interests—the amount of contributions, I notice from what you say there, is considerably different from the interests that these parties originally had in the British-American, isn't it?

A. That is the reason we formed the new company.

Q. You formed the new company because some of the parties who had the smaller interests in the British-American were willing to put up a larger share than others?

A. The people with the smaller interests in the British-American were the people who had the money.

Q. And they were to share in this new corporation which you contemplated, and which was afterwards effectuated, through the North Midway,—they were to get stock in accordance with their money contributions, were they? A. Yes.

Elliott was the man appointed to carry this plan into effect. He was the man I think we authorized to act on behalf of this little group that was to get this lease. He was then president of the British-American Oil Company, and it was on his recommendation, as president, that we went ahead, and if I am not mistaken, he was the one that originally recommended that we get together a subsidiary company

(Testimony of Roy Jones.)

that would do something and do it quick and fast. In pursuance of that authorization he went up to the field and started operations up there, sometime in September. The first thing that was done was to order some lumber from the King Lumber [437] Company. This lease affected the northwest quarter of the land that is in suit here.

The North Midway did not afterwards drill a well on the land. While they were waiting for the rig lumber, which we were not able to get at first, a corporation came along and began dealing with one of our men in the field for a lease on the thing; and finally they agreed to go ahead and drill very diligently and do a lot of work on the thing, and we talked it all over and concluded if they wanted to go ahead, so much the better, and we would go ahead on something else, if they wanted particularly that piece of land, because we had other pieces. That company was the predecessor of the Dominion Oil Company; I think at that time it was Maxwell McDonnell's and those fellows. They went ahead and drilled the well. They took over our stuff. They repaid us for the outlays that we had made prior to that time, after I fought with them for about a year and a half, but that was part of the original agreement.

Cross-examination.

(By Mr. HALL.)

The North Midway Oil Company never did any actual drilling on this northwest quarter of 15, the furthest they ever got was to have a derrick par-

(Testimony of Roy Jones.)

tially built. They could not get the stuff to complete it, and in the meantime along came these other people and took the thing off their hands.

Q. Do you know personally what had been done on the ground? Did you go there yourself to see?

A. I don't think I ever went there at that time. As secretary I got constant reports.

The North Midway Oil Company was not incorporated until [438] October 27, 1909. The British-American Oil Company made this lease to Dickinson on September 27, 1909.

Q. And Dickinson never did anything under that lease more than to simply assign it to the North Midway Company, did he?

A. Dickinson simply took that over for the purpose of going ahead and prosecuting the work we already had under way, and to make somebody or other responsible for the money, the expense we were incurring, you see.

Dickinson himself did not do anything on the land. We did not have any money raised at that time, actually subscribed. We didn't put the money up because there wasn't anything to put it up for. There were some small amounts actually put up, just for operating expenses. I have forgotten just what they were. There was never any substantial sum put up by the stockholders of the North Midway Oil Company. There was never any actual cash called for. They got out from under and subleased to Joe McDonnel. That was afterwards split into a lease to the Maxwell crowd, which became the Dominion

(Testimony of Roy Jones.)

Oil Company. And the north half of the 80 acres went to what eventually became the Bankline. And the north 80 acres eventually went to Captain John Barneson and Mr. Walker. That passed through a number of hands and was leased and turned back, and had a long history. It was in the hands of M. Z. Elliott and the Elliott Oil Company at one time. It was in the hands of Frank J. Carman at one time, and different people.

Q. The North Midway Oil Company then never had anything to do with the actual development of oil on this northwest quarter?

A. Except they promoted it very vigorously.

Q. Beyond being a lessee, lessor and promoter.

A. Yes. [439]

Q. And that is also true as to the British-American Oil Company; it never did anything actually as a corporation toward development?

A. Well, it could not after it leased it.

Mr. HALL.—I desire to offer and read in evidence the minutes of the meeting of the board of directors of the British-American Oil Company on January 6, 1910, at pages 28 and 29 of the record produced by the plaintiff, as follows, to wit:

“Jan. 6—1910.

“Jan. 6—1910.

“Called meeting of the Board of Directors of the British-American Oil Company at the office of Strong and Dickinson, January 6, 1910, at 4:00 P. M.

“Present:—M. Z. Elliott in the chair, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Upon motion of Mr. McDonald, seconded by Mr.

Roy Jones and duly carried, the reading of the minutes of the preceding meetings was postponed.

“It was moved by Mr. McDonald, seconded by Senator Dorsey that the firm of Toland & Rogers be retained as counsel for this Company in the Cunningham lawsuit, and that Mr. Thos. Scott be retained as local counsel at Bakersfield. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Senator Dorsey and seconded by Mr. McDonald that the Executive Committee be instructed to confer with the attorneys and take all necessary steps to prepare and record proofs of labor, and to make applications for patents on the property of this Company. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Mr. McDonald, seconded by Senator Dorsey that Mr. Andrews be requested to prepare necessary papers to reduce the capitalization of this Company from \$1,250,000.00 par value to \$100,000.00 par value, and that all necessary proceedings to that end be taken. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Senator Dorsey and seconded by Mr. Roy Jones, that the President and Secretary be authorized to borrow not to exceed \$1000.00, and to execute and give the notes of the Company therefor. The motion was carried by the following vote:—
[440]

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“It was moved by Senator Dorsey and seconded by W. Z. McDonald that the President and Secretary be authorized to execute and deliver on behalf of this Company quitclaim deeds for such lands in Coalinga, held under locations by this company, as were not protected by it in 1909 to such stockholders of the Company as did protect it; and quitclaim deeds to its land in the Devil’s Den and Templor Districts to stockholders of this Company and their associates.

“On roll call the motion was carried by the following vote:

“Ayes:—M. Z. Elliott, S. W. Dorsey, W. Z. McDonald, Frank Strong and Roy Jones.

“Noes:—None.

“The meeting then adjourned until Saturday morning, January 8th, at 9:00 A. M. at the office of Strong & Dickinson, Corner 2nd & Broadway.

“M. Z. ELLIOTT,

“President.

“FRANK R. STRONG,

“Secretary.”

Mr. HALL.—I offer and read in evidence the minutes of the meeting of the board of directors of the British-American Oil Company on January 8, 1910, at pages 30 and 31 of the minute-book produced by the witness, as follows, to wit:

“Jan. 8—1910.

“Adjourned meeting of the Board of Directors of the British-American Oil Company at the office of Strong & Dickinson, Corner Second and Broadway.

“Present:—M. Z. Elliott in the chair, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Absent:—None.

“The reading of the minutes of the preceding meeting was postponed.

“It was moved by S. W. Dorsey, seconded by W. Z. McDonald that the capital stock of the Company be reduced to \$100,000. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“It was moved by W. Z. McDonald, seconded by Roy Jones, that the President and Secretary be authorized and instructed to execute and deliver notes of the corporation to the following persons in amounts as follows:—

“F. R. Strong	\$135.00
S. W. Dorsey.....	135.00
W. Z. McDonald.....	135.00
J. P. Jones.....	135.00

M. Z. Elliott..... 135.00

A. H. Butler & Co..... 65.00

[441] said notes to cover like amounts loaned by the said named persons to the British-American Oil Company. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“It was moved by S. W. Dorsey, seconded by W. Z. McDonald that the sums due the several persons named in a resolution adopted by the Board of Directors on February 3, 1908, shall be paid to Frank R. Strong, John P. Jones and Stephen W. Dorsey out of the first monies received by this company for royalties ~~off-of~~” (correction in ink “or from—O. K. R. J.”) “the sale of property, or from any other income that may accrue. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and Frank R. Strong.

“Noes:—None.

“The President presented a letter from S. W. Dorsey, notifying this company that he contests the claim of A. H. Butler for the commission for the leasing of the South one-half of Section 15, Township 31 South, Range 22 East, M. D. B. & M., on the ground that he, himself, is entitled to the said commission. It was moved by Roy Jones and seconded by F. R. Strong that the letter be received and filed,

and its contents noted on these minutes. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“It was moved by W. Z. McDonald, seconded by F. R. Strong, that the President and Secretary be, and they are hereby authorized and instructed to execute and deliver a quitclaim deed to the Combination Oil Company for all of Section 35, Township 27 South, Range 18 East, M. D. B. & M., for the consideration of \$1,000.00 paid by A. H. Butler, the receipt of which is acknowledged. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, Roy Jones and F. R. Strong.

“Noes:—None.

“The meeting then adjourned subject to the call of the chair.

“M. Z. ELLIOTT,

“President.

“FRANK R. STRONG ~~ROY JONES~~

“Secretary.”

Mr. HALL.—I also offer and read in evidence the minutes of the meeting of the board of directors of the British-American Oil Company on March 12, 1910, at pages 32, 33 and 34 of the record as follows, to wit: [442]

“Mar. 12, 1910.

“Meeting of the Board of Directors of the British-American Oil Company held pursuant to the call of the chair, March 12, 1910.

“Present:—M. Z. Elliott in the chair, F. R. Strong, W. Z. McDonald, S. W. Dorsey and Roy Jones.

“Absent:—None.

“The reading of the minutes of the preceding meeting was postponed.

“Director Roy Jones, seconded by Director W. Z. McDonald, moved the adoption of the following resolution:

“RESOLVED, that William O. Maxwell be, and he is hereby appointed, as the agent of this corporation to take all necessary steps for the purpose of applying in the name of this corporation. (British-American Oil Company) for United States patent on the Zee No. 8, Zee No. 9 and Zee No. 10, placer mining claims, and that the President and Secretary of this corporation be, and they are hereby authorized and directed to execute, on behalf of this corporation and under its seal, a written power of attorney, to said William O. Maxwell, substantially in the words and figures following, to wit:

“POWER OF ATTORNEY.

“KNOW ALL MEN BY THESE PRESENTS:—That BRITISH AMERICAN OIL COMPANY, a corporation, organized and existing under the laws of the State of California, having its principal place of business at the City of Los Angeles, California, does hereby constitute, and appoint William O. Max-

well, of McKittrick, Kern County, California, (the same being within the Visalia, California, United States Land District), the attorney in fact of said corporation, for said corporation, and in its name to make applications for patent of the United States in the proper Land Office upon the following placer mining claims situate in Kern County, California, and named and described as follows, to-wit:—(1) The Zee No. 8 placer mining claim comprising the Northwest quarter of Section 15, Township 31 South, of Range 22 East, Mount Diablo Base and Meridian; (2) The Zee No. 9 placer mining claim, comprising the Southeast quarter of said Section 15, in said T. 31 S., R. 22 E., M. D. B. & M.; and (3) The Zee No. 10 placer mining claim, comprising the Southwest quarter of said section 15, in said T. 31 S., R. 22 E., M. D. B. & M.; and to make or cause to be made any and all surveys, re-locations, amended locations, affidavits, and all necessary papers, which may be required or be proper or convenient in the transaction of such applications or to perfect or protect the same or the title to each, any and all of said claims; also in case of any and all contests, protests, adverse claims to take all measures necessary and proper to defend against such adverse claims, contests, protests, and against any and all suits, either in the Land Office, or in any judicial proceeding, and in all such proceedings and matters to execute any and all bonds, or other papers and to verify any and all proceedings, papers and matters to and including appeal or Writ of Error; and to [443] take any

and all other steps that may be necessary or proper to be taken to procure from the Government of the United States patent to said lands and premises, granting the same to said corporation; and to do all acts and things in and about the said premises which it, the said corporation, if present, could do, till patent is finally issued and delivered.

“IN WITNESS WHEREOF said corporation has in pursuance of a resolution of its Board of Directors, duly and regularly passed and adopted, caused these presents to be executed by its President and Secretary in its name, under its corporate seal, and as its corporate act and deed, all this 12th day of March, A. D. 1910.

“BRITISH AMERICAN OIL COMPANY.

“By M. Z. ELLIOTT,

“Its President.

[Corporate Seal]

“By ROY JONES,

“Its Secretary.”

“It was moved by W. Z. McDonald, seconded by Roy Jones, that Mr. Strong be appointed a committee of one to take up with Mr. Drake the matter of co-operating in securing a patent on land leased by this Company from him and his associates. The motion was carried by the following vote:—

“Ayes—M. Z. Elliott, F. R. Strong, W. Z. McDonald, S. W. Dorsey and Roy Jones.

“Noes:—None.

“Mr. Strong presented his written resignation as Secretary.

“It was moved by S. W. Dorsey and seconded by W. Z. McDonald that the resignation of Mr. Strong

be accepted. The motion was carried by the following vote:

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey and Roy Jones.

“Noes:—None. Mr. Strong not voting.

“It was moved by S. W. Dorsey, seconded by W. Z. McDonald that Roy Jones be elected Secretary vice F. R. Strong resigned. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, W. Z. McDonald, S. W. Dorsey, and F. R. Strong.

“Noes:—None. Mr. Jones not voting.

“It was moved by W. Z. McDonald, seconded by F. R. Strong, that Messrs. Elliott, Jones and Strong be, and they hereby are appointed a committee with power to act to negotiate an agreement with S. W. Dorsey, and to appoint him attorney and agent to act for the Company in Europe. The motion was carried by the following vote:—

“Ayes:—M. Z. Elliott, W. Z. McDonald, F. R. Strong and Roy Jones.

“Noes:—None. Mr. Dorsey not voting.

“The meeting then adjourned subject to the call of the chair.

“M. Z. ELLIOTT,

“President.

“ROY JONES,

“Secretary.” [444]

Mr. HALL.—I now offer and read in evidence a certified copy of the proceedings of the British-American Oil Company as filed with the county clerk and *ex-officio* clerk of the Superior Court of Los

Angeles County, California, respecting the proceedings in regard to the reduction of the capital stock, which is as follows, to wit: [445]

Plaintiff's Exhibit No. 8.

CERTIFICATE OF DIMINUTION OF CAPITAL STOCK OF BRITISH-AMERICAN OIL COMPANY.

State of California,
County of Los Angeles,—ss.

We, M. Z. Elliott, President of British-American Oil Company, a corporation, duly incorporated, organized and existing under and by virtue of the laws of the State of California, and Frank R. Strong, Secretary of said Corporation, and we, the undersigned, M. Z. Elliott, Frank R. Strong, W. Z. McDonald and Roy Jones, being four of the five Directors of said British-American Oil Company, the said Corporation, do, and each of the undersigned does, hereby certify and declare as follows:

That said British-American Oil Company is, and during all of the dates and times hereinafter mentioned, was a corporation duly incorporated, organized and existing under and by virtue of the laws of the State of California, and that its office and principal place of business is at the City of Los Angeles, County of Los Angeles, State of California, as more fully appears by the Articles of Incorporation of the said British-American Oil Company, duly filed in the office of the County Clerk of said Los Angeles County, California, on the 26th day of August, 1907.

That the amount of the Capital Stock of said Corporation authorized by its Articles of Incorporation is \$1,250,000, which is divided into 250,000 shares of the par value of five dollars each; that each and all of said 250,000 shares of the Capital Stock of said Corporation have been subscribed for; that the number of Directors of said Corporation, as provided by its Articles of Incorporation, is five, and that the undersigned, M. Z. Elliott, Frank R. Strong, W. Z. McDonald, and Roy Jones, are four of said five Directors and that Stephen W. Dorsey is the fifth of said Directors of said Corporation, and that said Directors were the Directors of said Corporation at all the dates and times herein mentioned; that said M. Z. Elliott is, and at all the dates and times herein mentioned was, the President of said Corporation, and that said Frank R. Strong, is and at all dates and times herein mentioned was, the Secretary of said Corporation.

That at all the dates and times on and after January 8th, 1910, said British-American Oil Company had no bonded indebtedness and no other indebtedness in excess of the amount of one thousand dollars; that a meeting of the Board of Directors of said British-American Oil Company was held [446] on Saturday, January 8th, 1910, at the principal place of business of said Corporation, at the building where the Board of Directors of said Company usually meets, to-wit, 147 South Broadway, ground floor, in the City of Los Angeles, Los Angeles County, State of California, which said meeting was duly called for the purpose of consideration and act-

ing upon and voting upon the proposition of diminishing the Capital Stock from 250,000 shares of the aggregate par value of \$1,250,000 to 20,000 shares of the aggregate par value of \$100,000, due notice of which meeting was given to each of the Directors of said corporation in all respects as required by law and the By-laws of said Corporation, and at which meeting all of the members of the Board of Directors of the said British-American Oil Company were present and voting, and,

We further hereby certify that at said meeting of the Board of Directors of said British-American Oil Company held as last aforesaid, a resolution was adopted, passed and concurred in by the unanimous vote of the Directors of said Company, (all of the Directors of said Company being present and voting in favor of said Resolution), diminishing the Capital Stock of said British-American Oil Company from \$1,250,000 divided into 250,000 shares of the par value of five dollars each, to \$100,000 divided into 20,000 shares of the par value of five dollars each.

We hereby further certify and declare that the Secretary of said British-American Oil Company, subsequent to said 8th day of January, 1910, and prior to the date hereof, did address, by mail, postage fully prepaid, a copy of said Resolution hereinbefore referred to, so adopted, passed and concurred in by the unanimous vote of the Board of Directors of said British-American Oil Company at said meeting of said Board held at the time and place aforesaid, so diminishing the Capital Stock of said corporation, as hereinbefore set forth, to each of the

stockholders of said corporation whose names appear upon the Company's books as sufficiently addressed or identified, at his place of residence, (the place of residence of each and all of said stockholders of said Company being known to said Secretary), and mailed said respective copies of said Resolution to said respective stockholders, being all of the stockholders of said corporation, with the proper postage thereon prepaid, and

We hereby further certify and declare that subsequent to the mailing of said copies of said Resolution to the stockholders of said Company, and prior to the date hereof, there has been filed with the Secretary of said British-American Oil Company a written approval and assent of the stockholders of said Corporation holding in the aggregate all of the subscribed Capital Stock and all of the issued Capital Stock of said Company, to wit, all of the Capital Stock of said Company, assenting to, approving, ratifying and confirming the diminution of the Capital Stock of said British-American Oil Company from \$1,250,000, divided into 250,000 shares of the par value of five dollars each, to \$100,000, divided into 20,000 shares of the par value of five dollars each, and ratifying and approving, assenting to and confirming said Resolution of the Board of Directors of said Corporation aforesaid, a true and correct copy of which said approval and assent is hereto attached, [447] marked "Exhibit A" and made a part hereof.

We hereby further certify that the persons who signed said written assent, of which "Exhibit A"

hereof is a copy, were and each of them was and is a subscriber for Capital Stock of said British-American Oil Company, and a stockholder of said British-American Oil Company, and that said stockholders have subscribed for and hold in their own names on the books of said company the number of shares set after their said names in said "Exhibit A" and in the aggregate they have subscribed for and hold all of the Capital Stock of said Corporation, to wit, 250,000 shares thereof, and that there are no stockholders other than those whose names are subscribed to said "Exhibit A." We further certify that no stockholders of said British-American Oil Company filed any written dissent with the Secretary of said Company.

We hereby further certify that said British-American Oil Company, the said corporation, and all and singular its Board of Directors and its President and Secretary, have duly and fully complied with each and all of the requirements of Subdivision Fifth of Section number 359 of the Civil Code of the State of California respecting, in connection with and for the purpose of diminishing the Capital Stock of said Corporation, as hereinabove set forth; and that said corporation and its officers have fully complied with all and singular provisions of Section 359 of the Civil Code of the State of California, and have taken all steps and proceedings required by law for and in connection with the diminution of the Capital Stock of said British-American Oil Company, as hereinabove set forth.

And we hereby further certify that the said Reso-

lution of the Board of Directors of said British-American Oil Company was adopted, as aforesaid, and was approved, ratified and confirmed by the written assent of the stockholders of said Corporation, as aforesaid, and by all and singular the proceedings hereinabove set forth, the capital stock of said British-American Oil Company has been diminished from \$1,250,000, divided into 250,000 shares of the par value of five dollars each, to \$100,000, divided into 20,000 shares of the par value of five dollars each all as hereinabove more particularly set forth.

IN WITNESS WHEREOF, we have hereunto set our hands and caused the corporate seal of said Corporation to be hereunto affixed, this 5th day of February, 1910.

M. Z. ELLIOTT,

President of British-American Oil Company.

FRANK R. STRONG,

Secretary of British-American Oil Company.

[Corporate Seal]

M. Z. ELLIOTT,

ROY JONES,

WM. Z. McDONALD,

FRANK R. STRONG,

Directors of British-American Oil Company. [448]

Subscribed, verified and sworn to before me, this 5th day of February, 1910, by M. Z. Elliott, President of British-American Oil Company, Frank R. Strong, Secretary of said Corporation, M. Z. Elliott, Frank R. Strong, W. Z. McDonald, and Roy Jones,

Directors of said British-American Oil Company.

OLIVE C. GEBAUER,

Notary Public in and for Los Angeles County, California.

The State of California,
County of Los Angeles,—ss.

M. Z. Elliott and Frank R. Strong each being first duly sworn deposes and says that said M. Z. Elliott is the President and said Frank R. Strong is the Secretary of British-American Oil Company; that he has read the foregoing certificate of diminution of the capital stock of said British-American Oil Company and knows the contents thereof; and that the same is true of his own knowledge.

M. Z. ELLIOTT.

FRANK R. STRONG.

Subscribed and sworn to before me this 5th day of February, 1910.

[Seal]

OLIVE C. GEBAUER,

Notary Public in and for the County of Los Angeles,
State of California.

The State of California,
County of Los Angeles,—ss.

On this 5th day of February, 1910, before me, Olive C. Gebauer, a notary public in and for the said county of Los Angeles, duly commissioned and sworn, personally appeared M. Z. Elliott known to me to be the president of British-American Oil Company, the corporation described in the within and annexed instrument and known to me to be the person whose name is subscribed to said instrument as

President of said company and also personally appeared before me Frank R. Strong, known to me to be the Secretary of British-American Oil Company, the corporation described in the within annexed instrument, and known to me to be the person whose name is subscribed to said instrument as Secretary of said Company and acknowledged to me that they executed the within instrument as President and Secretary respectively of said company; and also personally appeared before me on the same day said [449] M. Z. Elliott and Frank R. Strong and also Roy Jones and W. Z. McDonald, each known to me to be a director of said British-American Oil Company, and the persons whose respective names are subscribed to such instrument as such directors of said corporation, and they severally acknowledged to me that they executed said instrument as Directors of said British-American Oil Company.

In Witness Whereof I have hereunto set my hand and affix my notarial seal at my office in said County of Los Angeles, State of California, the day and year in this certificate first above written.

[Seal]

OLIVE C. GEBAUER,

Notary Public in and for the County of Los Angeles,
State of California.

EXHIBIT "A."

We, the undersigned, owners and holders in the aggregate of 250,000 shares of the capital stock of the British American Oil Company, being the total subscribed and issued stock of said Company, hereby approve, assent to and authorize the reduction of the

capital stock of said corporation from 250,000 shares at the par value of \$1,250,000 to 20,000 shares of the par value of \$100,000.00.

We further assent to, ratify, confirm and approve a resolution of the Board of Directors of said British American Oil Company adopted by unanimous vote of said Board of Directors at a special meeting called for that purpose on Saturday, January 8, 1910, by which resolution it is resolved that the capital stock of said British-American Oil Company be reduced from 250,000 shares of the aggregate par value of \$1,250,000.00 to 20,000 shares of the aggregate par value of \$100,000.00, a copy of which said resolution is hereto attached, marked Exhibit "A" and made a part hereof.

IN WITNESS WHEREOF we have hereunto set our hands this 8th day of January, 1910.

Names of Stockholders of British-American Oil Company.	No. of Shares Owned by Each.
John P. Jones, by his Atty. in Fact Roy	
Jones	39990
Roy Jones	10
M. Z. Elliott	40000
Stephen W. Dorsey	40000
Frank R. Strong	13334
George W. Dickinson	13333
Wm. Z. McDonald	40000
L. W. Andrews	13333
A. H. Butler	50000

State of California,
County of Los Angeles,—ss.

On this 8th day of January in the year nine-

teen hundred [450] and ten before me Olive C. Gebauer, a Notary Public in and for said county of Los Angeles state of California residing therein, duly commissioned and sworn personally appeared M. Z. Elliott, Frank R. Strong, Stephen W. Dorsey, Wm. Z. McDonald, Roy Jones, George W. Dickinson, and Lewis W. Andrews known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] OLIVE C. GEBAUER,
Notary Public in and for said County of Los Angeles,
State of California.

State of California,
County of Los Angeles,—ss.

On this 8th day of January, A. D. 1910, before me Olive C. Gebauer, a Notary Public in and for the said county and State residing therein, duly commissioned and sworn, personally appeared Roy Jones known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of John P. Jones, and acknowledged to me that he subscribed the name of John P. Jones thereto as principal and his own name as attorney in fact.

In witness whereof I have hereunto set my hand and affixed my official seal on the day and year in this certificate first above written.

[Notarial Seal] OLIVE C. GEBAUER,
Notary Public in and for said County and State.

State of New York,
County of New York,—ss.

On this 14th day of January, A. D. 1910, before me Joseph J. Schmidt, a Notary Public in and for the said County and State residing therein duly commissioned and sworn, personally appeared A. H. Butler known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Notarial Seal] JOSEPH J. SCHMIDT,
Notary Public, New York County. [451]

[Endorsed]: 8831. Filed Feb. 8, 1910. C. G. Keyes, Clerk. By W. C. Watson, Deputy.

State of California,
County of Los Angeles,—ss.

No. 8831.

I, H. J. Lelande, County Clerk and *ex-officio* Clerk of the Superior Court, do hereby certify the foregoing to be a full, true and correct copy of the original Certificate of Diminution of Capital Stock of British-American Oil Company, on file in my office, and that I have carefully compared the same with the original.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Superior Court this 23rd day of April, 1918.

H. J. LELANDE,
County Clerk.

By D. E. Higgins,
Deputy Clerk.

No. A.-58—Eq. U. S. vs. Dominion Oil Co., et al.,
Plffs. Exhibit No. 8. Filed April 24, 1918. Chas. N.
Williams, Clerk. [452]

Mr. HALL.—Mr. Weil, I have here a tabulation of these various locations, and I will show you how I have done it. This is the group (indicating), and the names (indicating), and these are the locations upon which they appear (indicating). There is the name of the location (indicating), the description of the land (indicating), the book and the page of the county records of Kern County (indicating.) Now, that goes through each group, and all groups, and gives the description of all of the claims, the names of the locators on each claim, and so forth.

Mr. L. W. ANDREWS.—You have checked that up as to the different locators?

Mr. HALL.—It has been checked over, and checked against the official records of Kern County. There may be some typographical errors in there that we haven't got, but we tried to have them carefully compared.

Mr. PRINGLE.—As I understand, your stipulation at the present time is simply that we waive the question of the competency of the evidence, reserving the—

Mr. HALL.—That is all—the right to its materiality, to save the Government buying 207 certified copies.

Mr. WEIL.—This may go in subject to the objection to its materiality.

The COURT.—Subject to its materiality and subject to any corrections.

Which said tabulation is as follows, to wit: [453]

“A list of the locators arranged in alphabetical order shows also the number of claims upon which each is located, as follows:

Name.	Number of Locations.
B. Adams	71
Lewis W. Andrews	17
A. W. Casey	36
N. G. Casey	15
W. P. Casey	15
Wallace D. Dickinson	17
Geo. W. Dickinson	201
Stephen W. Dorsey	108
L. B. Dorsey	93
M. Z. Elliott	7
O. C. Gebauer	17
G. A. Horn.....	63
George C. Haldeman	108
F. J. Haldeman	93
Addison C. Macon	41
Henry L. Musser	184
Warren F. McGrath	201
H. R. McDonald	80
J. E. McDonald	52
Albert G. Shaw	104
Frank R. Strong.....	17

“The various claims were located in groups. I have carefully gone over all of the 207 locations and have picked out the claims upon which each group was located, they are as follows:

George C. Haldeman	Wallace D. Dickinson
Warren F. McGrath	George W. Dickinson
O. C. Gebauer	Frank R. Strong
L. W. Andrews	Stephen W. Dorsey

“This group was located on the following claims:

Claim Name.	Description.	Record.	Page.
ZEE No.		Book.	
1	SE. $\frac{1}{4}$ Sec. 32 T. 31 S., R. 23 E., M. D. M.	71	1
“ “ 2	NE. $\frac{1}{4}$ 32-31-23	do	2
“ “ 3	NW. $\frac{1}{4}$ 32-31-23	“	3
“ “ 4	SW. $\frac{1}{4}$ 32-31-23	“	4
“ “ 5	SE. $\frac{1}{4}$ 30-31-23	“	5
“ “ 6	NE. $\frac{1}{4}$ 30-31-23	“	6
“ “ 7	NW. $\frac{1}{4}$ 30-31-23	“	7
“ “ 8	NW. $\frac{1}{4}$ 15-31-22	“	8
“ “ 9	SE. $\frac{1}{4}$ 15-31-22	“	9
“ “ 10	SW. $\frac{1}{4}$ 15-31-22	“	10
“ “ 11	SE. $\frac{1}{4}$ 32-27-19	“	11
“ “ 12	NE. $\frac{1}{4}$ 32-27-19	“	12
“ “ 13	NW. $\frac{1}{4}$ 32-27-19	“	13
“ “ 14	SW. $\frac{1}{4}$ 32-27-19	“	14
“ “ 15	SE. $\frac{1}{4}$ 6-27-19	“	15
“ “ 16	NW. $\frac{1}{4}$ 7-27-19	“	16
“ “ 17	SE. $\frac{1}{4}$ 7-27-19	“	17

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“This group was located on seventeen quarter sections.

“George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
Geo. W. Dickinson	
Stephen W. Dorsey	

Claim Name.	Description.	Record. Book.	Page.
ZEE No. 52	S. 1/2 NE. 1/4 Sec. 2-29-20	71	18
" " 73	S. 1/2 SE. 1/4 Sec. 10-29-20	do	39
" " 74	S. 1/2 NW. 1/4, NE. 1/4, NW. 1/4 10-29-30	"	40

"This group was located on three 120-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
Geo. W. Dickinson	A. W. Casey
Stephen W. Dorsey	H. R. McDonald

"ZEE No. 53	SE. 1/4 Sec. 22-29-30	71	19
" " 62	NW. 1/4 " 11-29-20	do	28
" " 67	S. 1/2 S 1/2 " 3-29-20	"	33
" " 88	SW. 1/4 " 28-26-18	"	54
" " 95	NW. 1/4 " 33-26-18	"	61
" " 101	SE. 1/4 " 1-27-18	"	67
" " 103	NW. 1/4 " 1-27-18	"	69
" " 109	SE. 1/4 " 3-27-18	"	75
" " 111	NW. 1/4 " 3-27-18	"	77
" " 122	NE. 1/4 " 12-27-18	"	88
" " 132	NW. 1/4 " 12-27-18	"	98

"This group was located on eleven 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	George A. Horn
Stephen W. Dorsey	H. R. McDonald

"ZEE No. 54	SW. 1/4 Sec. 22-29-20	71	20
" " 89	SE. 1/4 " 28-26-18	do	55

"This group was located on two 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	J. E. McDonald
Stephen W. Dorsey	G. A. Horn

Casey

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 55	NE. 1/4 Sec. 22-29-20	71	21

"There may be an excess area in this quarter section.

The description does not so indicate, however.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	J. E. McDonald
Stephen W. Dorsey	G. A. Horn [455]

"ZEE No. 71	NE. 1/4 Sec. 4-29-20	71	37
" " 97	NE. 1/4 " 33-26-18	"	63
" " 105	SE. 1/4 " 2-27-18	"	71
" " 116	NE. 1/4 " 5-27-18	"	82
" " 141	SE. 1/4 " 17-27-18	"	107

"This group was located on five 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	W. P. Casey
Stephen W. Dorsey	Addison C. Macon

"ZEE No. 56	SW. 1/4 Sec. 15-29-20	71	22
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"This group was located on one 160-acre tract.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	A. W. Casey
Stephen W. Dorsey	G. A. Horn

"ZEE No. 57	NW. 1/4 Sec. 15-29-20	71	24
" " 61	NE. 1/4 " 11-29-20	"	27
" " 75	NE. 1/4 " 6-26-18	"	41
" " 81	SE. 1/4 " 20-26-18	"	47
" " 83	NE. 1/4 " 29-26-18	"	49

“This group was located on five 160-acre tracts.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	J. E. McDonald
Stephen W. Dorsey	B. Adams

“ZEE No.	58	NE. ¼	Sec.	15-29-20	71	24
“	“	92	NE. ¼	“	32-26-20	do 58
“	“	102	SW. ¼	“	1-27-18	“ 68
“	“	107	NW. ¼	“	2-27-18	“ 73
“	“	129	SW. ¼	“	11-27-18	“ 95
“	“	137	SE. ¼	“	15-27-18	“ 103

“This group was located on six 160-acre tracts.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	H. R. McDonald
Stephen W. Dorsey	B. Adams

“ZEE No.	59	SW. ¼	Sec.	11-29-20	71	25
“	“	60	SE. ¼	“	11-29-20	do 26
“	“	121	SE. ¼	“	8-27-18	“ 87
“	“	133	NE. ¼	“	12-27-18	“ 99
“	“	134	SE. ¼	“	12-27-18	“ 100
“	“	135	SW. ¼	“	12-27-18	“ 101
“	“	136	NW. ¼	“	14-27-18	“ 102
“	“	138	SW. ¼	“	15-27-18	“ 104
“	“	139	NE. ¼	“	15-27-18	“ 105

[456]

“This group was located on nine 160-acre tracts.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	G. A. Horn
Stephen W. Dorsey	Addison C. Macon

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 63	SW. $\frac{1}{4}$ Sec. 1-29-20	71	29
" " 99	NW. $\frac{1}{4}$ " 34-26-18	"	65
" " 118	NW. $\frac{1}{4}$ " 18-27-18	"	84
" " 140	NW. $\frac{1}{4}$ " 15-27-18	"	106
" " 142	NE. $\frac{1}{4}$ " 17-27-18	"	108

"This group was located on five 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	B. Adams
Stephen W. Dorsey	W. P. Casey

"ZEE No. 64	NW. $\frac{1}{4}$ Sec. 1-29-20	71	30
" " 66	SW. $\frac{1}{4}$ " 2-29-20	"	32
" " 86	NW. $\frac{1}{4}$ " 26-26-18	"	52
" " 91	SW. $\frac{1}{4}$ " 27-26-18	"	57
" " 100	NE. $\frac{1}{4}$ " 1-27-18	"	66
" " 119	NE. $\frac{1}{4}$ " 8-27-18	"	85

"This group was located on six 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	Addison C. Macon
Stephen W. Dorsey	H. R. McDonald

"ZEE No. 65	NE. $\frac{1}{4}$ Sec. 1-29-20	71	31
" " 79	SW. $\frac{1}{4}$ " 19-26-18	"	45
" " 85	SE. $\frac{1}{4}$ " 29-26-18	"	51
" " 87	NE. $\frac{1}{4}$ " 28-26-18	"	53
" " 120	SW. $\frac{1}{4}$ " 8-27-18	"	86
" " 131	SE. $\frac{1}{4}$ " 11-27-18	"	97

"This group was located on six 160-acre tracts.

"George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	W. P. Casey
Stephen W. Dorsey	H. R. McDonald

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 68	SE. 1/4 Sec. 4-29-20	71	34
" " 77	NW. 1/4 " 4-26-18	"	43
" " 84	SW. 1/4 " 29-26-18	"	50

"This group located on three 160-acre tracts.

"George C. Haldeman Albert G. Shaw
 Warren F. McGrath Henry L. Musser
 George W. Dickinson B. Adams
 Stephen W. Dorsey A. W. Casey [457]

"ZEE No. 69	SW. 1/4 Sec. 4-29-20	71	35
" " 115	NW. 1/4 " 4-27-18	"	71
" " 126	SE. 1/4 " 10-27-18	"	92

"This group was located on three 160-acre tracts.

"George C. Haldeman Albert G. Shaw
 Warren F. McGrath Henry L. Musser
 George W. Dickinson N. G. Casey
 Stephen W. Dorsey H. R. McDonald

"ZEE No. 70	NW. 1/4 Sec. 4-29-20	71	36
" " 82	NW. 1/4 " 29-26-18	"	48
" " 93	SW. 1/4 " 32-26-18	"	59
" " 96	SW. 1/4 " 33-26-18	"	62
" " 98	SE. 1/4 " 33-26-18	"	64
" " 104	NE. 1/4 " 2-27-18	"	70
" " 106	SW. 1/4 " 2-27-18	"	72
" " 112	NE. 1/4 " 4-27-18	"	78
" " 114	SW. 1/4 " 4-27-18	"	80
" " 124	NW. 1/4 " 10-27-18	"	90

"This group was located on ten 160-acre tracts.

"George C. Haldeman Albert G. Shaw
 Warren F. McGrath Henry L. Musser
 George W. Dickinson N. G. Casey
 Stephen W. Dorsey G. A. Horn

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 72	SW. $\frac{1}{4}$ Sec. 10-29-20	71	38
" " 110	SW. $\frac{1}{4}$ " 3-27-18	"	76
" " 127	SW. $\frac{1}{4}$ " 10-27-18	"	93
"This group was located on three 160-acre tracts.			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	H. R. McDonald		
Stephen W. Dorsey	J. E. McDonald		
"ZEE No. 76	NE. $\frac{1}{4}$ Sec. 5-26-18	71	42
" " 123	SE. $\frac{1}{4}$ " 9-27-18	"	89
"This group was located on two 160-acre tracts.			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	B. Adams		
Stephen W. Dorsey	Addison C. Macon		
"ZEE No. 78	NE. $\frac{1}{4}$ Sec. 19-26-18	71	44
" " 94	SE. $\frac{1}{4}$ " 32-26-18	"	60
" " 113	SE. $\frac{1}{4}$ " 4-27-18	"	79
"This group located on three 160-acre tracts.			
[458]			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	B. Adams		
Stephen W. Dorsey	N. G. Casey		
"ZEE No. 80	NW. $\frac{1}{4}$ Sec. 20-26-18	71	46
" " 90	NW. $\frac{1}{4}$ " 27-26-18	"	56
"This group located on two 160-acre tracts.			
"George C. Haldeman	Albert G. Shaw		
Warren F. McGrath	Henry L. Musser		
George W. Dickinson	A. W. Casey		
Stephen W. Dorsey	J. E. McDonald		
"ZEE No. 108	NE. $\frac{1}{4}$ Sec. 3-27-18	71	74

“This group located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	A. W. Casey
Stephen W. Dorsey	J. E. McDonald

“ZEE No. 117 NW. ¼ Sec. 5-27-18 71 83

“This group located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	Addison C. Macon
Stephen W. Dorsey	J. E. McDonald

“ZEE No. 125 NE. ¼ Sec. 10-27-18 71 91

“This group was located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	B. Adams
Stephen W. Dorsey	M. Z. Elliott

“ZEE No. 128 NW. ¼ Sec. 11-27-18 71 94

“This group located on one 160-acre tract.

George C. Haldeman	Albert G. Shaw
Warren F. McGrath	Henry L. Musser
George W. Dickinson	M. Z. Elliott
Stephen W. Dorsey	J. E. McDonald

“ZEE No. 130 NE. ¼ Sec. 11-27-18 71 96

“This group located on one 160-acre tract.

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Halderman
Albert G. Shaw	B. Adams
Henry L. Musser	G. A. Horn [459]

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 143	NW. $\frac{1}{4}$ Sec. 17-27-18	71	109
" " 147	NW. $\frac{1}{4}$ " 27-27-18	"	113
" " 214	NE. $\frac{1}{4}$ " 35-26-18	"	180
" " 239	SE. $\frac{1}{4}$ " 22-26-17	"	196

"This group located on four 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	G. A. Horn
Henry L. Musser	J. E. McDonald

"ZEE No. 144	SW. $\frac{1}{4}$ Sec. 17-27-18	71	110
" " 146	NW. $\frac{1}{4}$ " 28-27-18	"	112
" " 148	NE. $\frac{1}{4}$ " 27-27-18	"	114
" " 150	SE. $\frac{1}{4}$ " 27-27-18	"	116
" " 151	NW. $\frac{1}{4}$ " 22-27-18	"	117
" " 160	SE. $\frac{1}{4}$ " 23-27-18	"	126
" " 181	SE. $\frac{1}{4}$, SE. $\frac{1}{4}$, NE. $\frac{1}{4}$, SE. $\frac{1}{4}$	"	
	SE. $\frac{1}{4}$ NE. $\frac{1}{4}$ 9-28-19	"	147
" " 187	NE. $\frac{1}{4}$ Sec. 15-28-19	"	153
" " 188	SW. $\frac{1}{4}$ " 15-28-19	"	154
" " 193	NE. $\frac{1}{4}$ " 13-28-19	"	159
" " 196	S $\frac{1}{2}$ N. $\frac{1}{2}$ " 22-28-19	"	162
" " 201	SW. $\frac{1}{4}$ " 23-28-19	"	167

"This group located on twelve 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	G. A. Horn
Henry L. Musser	Addison C. Macon

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 145	NE. 1/4 Sec. 29-27-18	71	111
" " 149	SW. 1/4 " 27-27-18	"	115
" " 153	NW. 1/4 " 26-27-18	"	119
" " 164	SE. 1/4 " 24-27-18	"	130
" " 185	SE. 1/4 " 11-28-19	"	151
" " 195	SE. 1/4 " 13-28-19	"	161
" " 206	SW. 1/4 " 10-28-19	"	172
" " 208	SW. 1/4 " 10-28-19	"	174

"This group located on eight 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	Addison C. Macon
Henry L. Musser	H. R. McDonald

"ZEE No. 152	SE. 1/4 Sec. 22-27-18	71	118
" " 162	SW. 1/4 " 24-27-18	"	128
" " 166	NE. 1/4 " 6-28-19	"	132
" " 172	SE. 1/4 " 5-28-19	"	138
" " 180	W. 1/2 W. 1/2 " 9-28-19	"	146

"This group is located on five 160-acre tracts.

[460]

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	J. E. McDonald

"ZEE No. 154	SW. 1/4 Sec. 26-27-18	71	120
" " 159	NE. 1/4 " 23-27-18	"	125
" " 240	NE. 1/4 " 28-26-17	"	197

"This group is located on three 160-acre tracts.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	H. R. McDonald
Henry L. Musser	J. E. McDonald

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 155	NE. $\frac{1}{4}$ Sec. 26-27-18	71	121
" " 157	NW. $\frac{1}{4}$ " 23-27-18	"	123
" " 163	NE. $\frac{1}{4}$ " 24-27-18	"	129
" " 167	SW. $\frac{1}{4}$ " 6-28-19	"	133
" " 171	SW. $\frac{1}{4}$ " 5-28-19	"	137
" " 173	NW. $\frac{1}{4}$ " 4-28-19	"	139
" " 174	SW. $\frac{1}{4}$ " 4-28-19	"	140
" " 175	W. $\frac{1}{2}$ E. $\frac{1}{2}$ " 4-28-19	"	141
" " 178	SW. $\frac{1}{4}$ " 8-28-19	"	144
" " 235	N. $\frac{1}{2}$ NE. $\frac{1}{4}$ " " " "	"	"
	E. $\frac{1}{2}$ NW. $\frac{1}{4}$ " 21-26-17	"	194
" " 238	N. $\frac{1}{2}$ NE. $\frac{1}{4}$ " 29-26-17	"	195
" " 243	SW. $\frac{1}{4}$ " 27-26-17	"	200

"This group located on eleven 160-acre tracts, and one 80-acre tract.

"George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	H. R. McDonald

"ZEE No. 156	SE. $\frac{1}{4}$ Sec. 26-27-18	71	122
" " 158	SW. $\frac{1}{4}$ " 23-27-18	"	124
" " 161	NW. $\frac{1}{4}$ " 24-27-18	"	127
" " 168	SE. $\frac{1}{4}$ " 6-28-19	"	134
" " 169	NW. $\frac{1}{4}$ " 5-28-19	"	135
" " 170	NE. $\frac{1}{4}$ " 5-28-19	"	136
" " 176	NW. $\frac{1}{4}$ " 8-28-19	"	142
" " 177	NE. $\frac{1}{4}$ " 8-28-19	"	143
" " 182	SW. $\frac{1}{4}$ " 3-28-19	"	148
" " 197	SW. $\frac{1}{4}$ " 22-28-19	"	163
" " 199	NW. $\frac{1}{4}$ " 23-22-19	"	165
" " 220	NE. $\frac{1}{4}$ " 31-28-20	"	186
" " 222	NW. $\frac{1}{4}$ " 33-28-20	"	188
" " 223	SW. $\frac{1}{4}$ " 33-28-20	"	189
" " 226	SW. $\frac{1}{4}$ " 34-28-20	"	192
" " 227	W. $\frac{1}{2}$ SE. $\frac{1}{4}$ " 34-28-20	"	193
" " 242	NW. $\frac{1}{4}$ " 27-26-17	"	199

“This group is located on 16 160-acre tracts, and one 80-acre tract.

“George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	G. A. Horn
Henry L. Musser	H. R. McDonald

“ZEE No. 165	NW. ¼ Sec.	6-28-19	71	131
“ “ 186	NW. ¼ “	15-28-19	“	152
“ “ 202	SE. ¼ “	23-28-219	“	168
“ “ 218	NW. ¼ “	31-28-20	“	184
“ “ 219	SW. ¼ “	31-28-20	“	185
“ “ 221	NE. ¼ “	32-28-20	“	187
“ “ 224	NE. ¼ “	33-28-20	“	190
“ “ 225	SE. ¼ “	33-28-20	“	191

“This group is located on eight 160-acre tracts.

“George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	Addison C. Macon

“ZEE No. 179	SE. ¼ Sec.	8-28-19	71	145
“ “ 184	SW. ¼ “	11-28-19	“	150
“ “ 189	SE. ¼ “	15-28-19	“	155
“ “ 192	NW. ¼ “	13-28-19	“	158
“ “ 241	SE. ¼ “	28-26-17	“	198

“This group located on five 160-acre tracts.

“George W. Dickinson	Henry L. Musser
Warren F. McGrath	L. B. Dorsey
Albert G. Shaw	F. J. Haldeman

“ZEE No. 183	N. ½ NE. ¼, NE. ¼ NW ¼			
	Sec. 10-28-19	71	149	
“ “ 190	W. ½ NW. ¼, NE. ¼ NW. ¼			
	Sec. 14-28-19	“	156	
“ “ 191	NE. ¼ NW. ¼ Sec. 14-28-19	“	157	
“ “ 209	N. ½ NW. ¼ “ 34-26-17	“	175	

“This group located on two 120-acre tracts and one 80-acre tract and one 40-acre tract.

George W. Dickinson	L. B. Dorsey
Albert G. Shaw	A. W. Casey
Warren F. McGrath	F. J. Haldeman
Henry L. Musser	G. A. Horn

“ZEE No. 194	SW. ¼ Sec.	13-28-19	71	160
“ “ 212	NW. ¼ “	35-26-18	“	178

“This group located on two 160-acre tracts. [462]

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	B. Adams
Henry L. Musser	A. W. Casey
Henry L. Musser	

“ZEE No. 198	SE. ¼ Sec.	22-28-19	71	164
“ “ 200	NE. ¼ “	23-28-19	“	166
“ “ 205	SW. ¼ “	26-28-19	“	171
“ “ 207	SW. ¼ “	25-28-19	“	173
“ “ 210	NE. ¼ “	34-26-18	“	176
“ “ 211	SE. ¼ “	34-26-18	“	177
“ “ 216	NW. ¼ “	30-28-20	“	182

“This group located on seven 160-acre tracts.

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	A. W. Casey
Henry L. Musser	H. R. McDonald

“ZEE No. 203	NW. ¼ Sec.	26-28-19	71	169
“ “ 213	SW. ¼ “	35-26-18	“	179

“This group located on two 160-acre tracts.

George W. Dickinson	L. B. Dorsey
Warren F. McGrath	F. J. Haldeman
Albert G. Shaw	A. W. Casey
Henry L. Musser	Addison C. Macon

Claim Name.	Description.	Record Book.	Page.
"ZEE No. 204	S. $\frac{1}{2}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ Sec. 26-28-19	71	170
"This group located on one 120-acre tract.			
"George W. Dickinson	L. B. Dorsey		
Warren F. McGrath	F. J. Haldeman		
Albert G. Shaw	A. W. Casey		
Henry L. Musser	J. E. McDonald		
"ZEE No. 215	SE. $\frac{1}{4}$ Sec. 35-26-18	71	181
" " 217	SW. $\frac{1}{4}$ " 30-28-20	"	183
"This group located on two 160-acre tracts.			
"George W. Dickinson	L. B. Dorsey		
Warren F. McGrath	F. J. Haldeman		
Albert G. Shaw	Addison C. Macon		
Henry L. Musser	J. E. McDonald		
"ZEE No. 244	NE. $\frac{1}{4}$ Sec. 33-26-17	71	201
"This group located on one 160-acre tract.			[463]
"B. Adams	G. A. Horn		
A. W. Casey	Addison C. Macon		
W. P. Casey	H. R. McDonald		
M. Z. Elliott	J. E. McDonald		
"ZEE No. 250	SW. $\frac{1}{4}$ Sec. 4-31-22	71	202
" " 251	N. $\frac{1}{2}$ S. $\frac{1}{2}$ " 10-30-21	"	203
"This group located on two 160-acre tracts.			
"B. Adams	G. A. Horn		
N. G. Casey	Addison C. Macon		
W. P. Casey	H. R. McDonald		
M. Z. Elliott	J. E. McDonald		
"ZEE No. 252	Lots 1, 2, 3 and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ 10-30-21	71	204

Mr. PRINGLE.—On behalf of the Dominion, if the Court please, our records were all destroyed some years ago by fire, so I can't go that far. To the best of my knowledge, the Dominion began producing oil in the early part of 1910, and since that time has been producing. It is now producing,—it has four wells,—I think producing about 5,500 barrels a month, and that condition prevailed at the time of the commencement of the suit and is continuing now.

Mr. HALL.—I think that statement is sufficient, your Honor.

Now, with the reservation that the Government has not gone into the question of damages, if any, or an accounting for any oil that has been removed, my understanding being it will be agreeable to the Court and counsel that those questions may be reserved until such time as the Court will render a decree in this case, if they ever become material, the Government rests its case. [465]

The defendants, to sustain the issues on their part, offered the following, to wit:

Testimony of E. W. King, for Defendants.

E. W. KING, a witness called in behalf of the defendants, having first been duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

I reside at Bakersfield, California. I am general manager of the King Lumber Company. We have been engaged in the lumber business since 1903. During the years 1909 and 1910 I did business in the

(Testimony of E. W. King.)

oil fields, supplying rig lumber. Our records show that we delivered lumber to the Northwest quarter of Section 15, township 31 South, Range 22 East, sometimes designated as the Dominion or British-American property. Our delivery tags show that the following amounts of lumber were delivered, to wit: On September 17, 1909, \$49.88, \$60.61, \$49.68; September 18, 1909, \$50.51, \$64.61, \$51.22, \$45.94, \$45.60, making a total of two days' charges of \$417.95. That was rig lumber that was delivered. The bill which you have just exhibited to me was the original bill submitted by our company for that. That describes the lumber that was delivered and the dates on which it was delivered.

Mr. WEIL.—With your permission, I will offer this in evidence. It is as follows, to wit: [466]

“(On Billhead of King Lumber Co.)
 Bakersfield, Cal., Sept. 22, 1909.
 For Acc't of Frank Strong.
 Destination—McK.
 c/o A. H. Butler, Jr. McK.

Date.	No.	Pieces.	Size.	Length.	Description.	Price.	Amount.	Total.
9/17	1	16/16	32	O. P.	683			
	2	“	16	“	683			
	1	16/18	“	“	384	1750	28.50	49.88
	1	12/30	26	W. Beam	780			
	1	14/14	14	O. P.	228			
	6	2/10	16	“	160			
	1	5/16	12	“	80			
	1	“	16	“	107			
	2	16/16	18	“	768	2123	28.50	60.51
	1	14/14	14	“	228			
	3	16/16	16	“	1023			
	8	2/ 6	20	“	160			
	1	5/16	12	“	80			
	14	“	18	“	252	1743	28.50	49.68
9/18	3	12/12	24	“	864			
	1	“	16	“	192			
	45	1/12	16	“	720	1776	28.50	50.51
	9	8/ 8	20	“	960			
	2	“	22	“	235			
	30	2/ 8	16	“	640			
	1	24/24	9	“	432	2267	28.50	64.61
	10	6/ 6	16	“	480			
	1	14/14	16	“	261			
	4	4/ 4	16	“	85			
	16	2/ 4	16	“	171			
	4	4/ 6	20	“	160			
	24	2/10	20	“	640	1707	28.50	51.22
	7	1/12	16	“	112			
	48	“	20	“	960			
	30	“	18	“	540	1612	28.59	45.94
	52	1/12	20	“	1040			
	40	“	14	“	560	1600	28.50	45.60
								417.95

Del. from McKittrick Yard.

(Testimony of E. W. King.)

The lumber there indicated was not sufficient for a complete rig. There was other lumber delivered there on September 21, 1909. That lumber amounted to \$82.81. There was 2,307 board feet of lumber in that delivery. The bill which you have exhibited to me is the original bill that was submitted by our company. It correctly describes the kind of lumber and the dates on which it was delivered.

Mr. WEIL.—I will ask that this be marked Defendant's Exhibit "B" and offered in evidence, which is as follows, to wit:

Defendants' Exhibit "B."

"THE KING LUMBER CO.

Redwood, Oregon and Mountain Pine Lumber.

Rig and Derrick Timber a Specialty.

Shakes, Shingles, Lath, Doors, Windows,

Blinds, Sash, Weights, Cord.

Bakersfield, Cal., September 23, 1909.

For Acc't of Frank Strong.

Destination—McK.

"Cartage 50 cents per M. Minimum charge 25 cents. Interest charged at rate of 1 per cent per month on all accounts after 30 days.

"Date.	No.	Pieces.	Size.	Length.	Description.	Price.	Amount.	Total.
9/21	1	16/16	24	O. P.	512			
	8	2/10	18	"	240			
	6	2/ 8	20	"	160			
	55	1/ 6	"	"	550			
	48	1/12	16	"	768	2230 \$28-½	63.56	
	2	4/ 5	14	Oak,	47			
	1	3/12	10	"	30	77 25¢	19.25	82.81

O. K.—A. H. B. Jr.

Del. from McKittrick Yard."

(Testimony of E. W. King.)

At the time of the delivery of this extra quantity of lumber there was not then sufficient lumber on the ground to erect a rig. On October 29, 1909, we delivered lumber of the value of \$44.46, and also delivered another load on the same date amounting to \$44.46. The final delivery of lumber was made on December 1, 1909. It consisted of the wheel material, such as cants, and so forth. [468]

Q. Do you know by whom this lumber was ordered?

A. My records show—well, there is a notation made here by the man who was representing us at that time, Mr. McWane,—he sends the notation, “First charge. This was ordered by M. Z. Elliott. Charge to Frank Strong. Send bills to A. H. Butler, Jr., McKittrick, to be O. K.’d. Respectfully, McWane.”

There was a reason why the whole of this rig lumber was not placed on the ground at the time the first lumber was put on there. We were delayed in getting the shipments of lumber owing to the car shortage which prevailed at that time, and also owing to the fact that the sawmills in Oregon and Washington were snowed in for several weeks. Mr. McWane telephoned to us a number of times and wanted to know how soon we could get it and promise delivery of the balance of that lumber. We could not have made deliveries of the balance of the lumber at any time earlier than we did. The M. J. McWane I have referred to was the manager of our McKittrick branch at that time. That was the yard

(Testimony of E. W. King.)

where the order came in. We were disappointed ourselves in our efforts to get lumber.

Q. And did you make promises to these people to deliver lumber and then found yourself obliged to disappoint them on account of these causes?

A. Well, we were obliged to disappoint a number of people at that time.

I don't think it would have been possible at that time to have gotten this lumber any faster than it was gotten. The condition of other dealers at that time was about the same as our own, we were all in the same fix. We were as well, if not better, equipped than other dealers in the field who furnished lumber for the oil fields. We had five yards. We were just as well equipped to deliver the lumber as anybody else; probably better because we [469] had five yards in the territory at that time. In my testimony I referred to a rig. By this I mean an oil well drilling derrick.

Cross-examination.

(By Mr. HALL.)

I have no record to show the dates on which this lumber was ordered. My record only shows the time it was delivered. At the time this lumber was delivered my headquarters were at Bakersfield. Mr. McWane of the McKittrick yard telephoned into Bakersfield and wanted to know if it was satisfactory or would be satisfactory to deliver lumber to these people, and asked for credit. That was just a few days prior to the date of delivery; I don't know just what date. That is the first I knew of any order

(Testimony of E. W. King.)

being given by these people for lumber for this property. I don't remember whether they came to see me about it. I have no record that shows that they made application for this lumber at any time prior to this date that our man from McKittrick 'phoned in to me about the matter of credit. That was just about a few days before the first delivery of lumber on the ground. McWane was our yard foreman or manager at McKittrick. I now hand you the original delivery tags. Those are the delivery tags when the lumber was loaded.

Mr. HALL.—Here is a note that says, "This was ordered by M. Z. Elliott, charge to Frank Strong, send all bills to A. H. Butler at McKittrick to be O. K.'d. Respectfully, McWane." Down at the bottom I notice punched out is "9." It looks like part of one of the figures is punched out, like "9-20-09."

A. That I didn't notice.

I have examined that paper; I couldn't tell what that is. I don't think that is a date. It could not have been the date [470] because the charge was made on the 17th. McWane sent this note in to us. I don't know what was punched out there. It might have been the 2d, but I wouldn't think so. I state that this delivery was made on these dates merely because of these delivery tickets which I have here. I know nothing about it personally, other than that. The record of those deliveries was made at McKittrick by McWane. The northwest quarter of Section 15 is some six or eight or ten miles from Mc-

(Testimony of E. W. King.)

Kittrick. The lumber was hauled to the ground by wagon. It was not hauled by our teams. I have no record as to when the teams arrived with the lumber on the ground. I knew nothing about it after it left our yard. We delivered the lumber to an independent hauler and he took it away from the yard. We delivered it to some hauler, and we made the notation on our ledger-card showing where it went to. Our records don't show whether or not it went there. I don't know. We didn't follow it to see where the hauler put it. The material delivered under the dates of September 17, 1909, and September 18, 1909, was all rig lumber. I don't know when the cabin lumber was delivered. The lumber delivered on September 21st was rig lumber. The lumber delivered on October 21st was rig lumber. I have not found any of our records showing that we delivered any cabin lumber. We made a delivery on November 24, 1909, amounting to \$62.36. The notation on the tag states, "To apply on rig sold in September." That is rig lumber. On November 24th there is a charge of \$62.36. McWane made the notation on there "To apply on rig sold in September." The price of lumber was going up, and this rig was sold in September, and we couldn't charge the higher prices of lumber. That was a delivery of rig lumber. We had a delivery of rig lumber there as late as November 24th. I haven't any record of the delivery [471] of any cabin lumber. There was no shortage of cabin lumber during this time. They could use most anything

(Testimony of E. W. King.)

for a cabin. We very seldom had a shortage of that stuff.

From the 1st of January, 1909, on, we had a yard at Bakersfield, one at McKittrick, one at Maricopa, and one at Fellows. There was activity in drilling in this field during the year 1908. We delivered quite a lot of material in the Midway field in 1908. We had quite a bit of trouble securing rig material during that period.

Q. How long during the year 1908 would it take to get the lumber for a complete rig?

A. Well, that often depends on whether you happened to have it in stock, or whether you had to order it from the north.

Q. Assuming I was a man there in the field and I had a location I wanted to drill up, and I came to your yard on the 1st of January, 1908, and said, "I want the lumber for a complete standard drilling rig." About how long would it be before you could deliver the lumber?

A. Well, that all depends on the price you want to pay for it.

Q. Well, the ordinary average market price that was going at that time.

A. Well, if you were taking it out of the yard and we happened to have it, you would have gotten it immediately; but the yard stock was very badly broken during the years 1908, 1909 and 1910; that was during the boom years, and it is hard for me to tell at this time what the exact condition was, other than I

(Testimony of E. W. King.)

know we were delayed in a number of cases in making delivery.

Q. Was this delivery that you recounted here upon the order of Mr. Elliott an unusual length of time, or was it a usual length, or about the length of time it took you to deliver this material? [472]

A. Well, I don't remember all the detail that happened on this particular order, other than the general situation. The condition at that time was bad to get delivery of material, and during the boom at that time in the oil fields, why, naturally it drained our stocks out of different yards, so it was nearly impossible for us to fill a complete rig order at any one time. After the 1st of July, 1909, it was not possible for us to have delivered rig material for a complete rig eight or ten miles from McKittrick within 30 days from the day it was ordered. We used all of our efforts to get material for these people and for other customers, and we were unable to do it. A man might have been delayed 60 or 90 days. Without going back to our records I wouldn't say I know of a case where a man was delayed a full 90 days. In the year 1909 there was one yard operating in McKittrick. We were the only lumber-yard there. There was one at Maricopa and one at Fellows. We were the only ones operating in these towns. There were two lumber-yards in Bakersfield in 1909, ourselves and another one. During the year 1909 a great deal of rig material was being furnished various parties by the yards in San Francisco and Los Angeles.

Testimony of A. H. Butler, Jr., for Defendants.

A. H. BUTLER, Jr., a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

During the month of September I had charge, in a way, of this property on the northwest quarter of Section 15. The notation "O. K. A. H. B., Jr.," on Exhibit "B" is in my handwriting. If that is the original bill, the lumber was delivered on the land on the [473] northwest quarter on that day. That is my O. K. approving the bill. I would not have O. K.'d the bill if the lumber had not been delivered. You have shown me Exhibit "A." I know that lumber went on the ground, but I could tell better by the team tickets that were issued by the King Lumber Company as to when it was delivered.

Q. Mr. Butler, I call your attention to these records of the King Lumber Company, and will ask you if the lumber described in these records, being the same lumber that is on these bills, being copies of the team tickets, was delivered on the land. There is one dated the 17th of September, '09, and there is one showing further deliveries on that date.

Mr. HALL.—On that land?

Mr. WEIL.—Yes.

Q. I hand you the bills describing them (handing bills to witness). A. Yes, sir.

Q. And can you say from looking at that now that that lumber was delivered on that land?

(Testimony of A. H. Butler, Jr.)

A. This lumber was delivered on 15, the northwest quarter.

That lumber was actually used in the construction of the derrick that was subsequently built on the land by Henry. I knew a firm named Hickock and Hubbard, in McKittrick. They were engaged in the teaming business. They did teaming for us. My recollection was that Jack O'Meara and Hickock and Hubbard were associated together, and I think three of Jack O'Meara's teams hauled this lumber; but they had some business together where they split up the money, I don't know.

Q. I will show you a bill of Hickock and O'Meara, which reads, "September 17th, 2 4-horse teams, one day hauling rig timber, 1 6-horse team, one day hauling rig timber; on the 18th of September, 2 4-horse teams, one day hauling rig timber; [474] September 18th, 1 6-horse team hauling rig timber; September 19th, 2 4-horse teams hauling rig timbers, and on the 21st, 2 6-horse teams working for one day hauling rig timbers." Refresh your recollection from that, if you can. Would you say that these teams described in these bills were hauling this rig timber which is described in the bill from King Lumber Company, and which went on to the northwest quarter? A. They were.

Mr. WEIL.—I will offer this in evidence and ask that it be marked Defendants' Exhibit "C."

The COURT.—What is the amount of that?

Mr. WEIL.—That was \$99 for teaming.

Which said exhibit "C" is as follows, to wit:

Defendants' Exhibit "C."

"McKittrick, Cal., Sept. 30, 1909.

"Mr. Frank Strong,

To Hickox & Hubbard, Dr.

Teamsters and Contractors,

Road Building and Sump Hole Work.

Bills Payable Monthly.

Sept. 17	2-4 horse teams	1 day	hauling	rig	timber.....	20.00
" "	1-6 " "	1 " "	" "	" "	.....	13.00
" 18	2-4 " "	1 " "	" "	" "	.....	20.00
" "	1-6 " "	1 " "	" "	" "	.....	13.00
" 19	2-4 " "	1 " "	" "	" "	.....	20.00
" 21	1-6 " "	1 " "	" "	" "	.....	13.00
						<u>\$99.00</u>

Pd. by J. McD."

Q. I show you another bill from Hickock and Hubbard, which carries forward the bill rendered for September, \$99, and indicates that on October 29th, 2 4-horse teams to do hauling, "rig T.," \$20. Refresh your recollection from that. Can you say on that day there was more of this rig lumber hauled out? A. Yes, sir.

Q. On that property?

A. On that property. [475]

Mr. WEIL.—I will ask that this be marked Defendants' Exhibit "D" and offered in evidence, as follows, to wit:

Defendants' Exhibit "D."

"(On Billhead of Hickox & Hubbard.)

McKittrick, Cal., Oct. 31, 1909.

"Mr. Frank Strong,

To Hickox & Hubbard, Dr.

Oct. 29	2-4 Horse team 1 day hauling rig T.	20.00	
	Bill rendered for Sept.	99.	\$119.00

North Midway Oil a/x

OK. M. Z. E.

Paid Nov. 9, 09.

Hickox & Hubbard.

By S. A. H.

(Please receipt this bill and mail to Roy Jones, Santa Monica, Cal.)"

My recollection was that I ordered this lumber from McWane of the King Lumber Company. He was manager of the yard at McKittrick. I ordered it several days before any delivery was made of any part of it. Mr. McWane thought he could deliver it all very soon. He thought he could deliver the complete drilling rig very soon. I had further conversations in regard to its delivery. I saw McWane daily, and I probably asked him three or four times a day if he had heard from the head office, to see if they could make delivery, and I would imagine at least two or three times a week he rang up the head office asking when the lumber would be out. He rang up in my presence. I remember the firm of Ridenour & Webber. They worked for me a great deal, and I told them that our crowd were going to drill on 15, and when I had orders to commence drill-

(Testimony of A. H. Butler, Jr.)

ing they could build the rig. The building of the rig was delayed because we didn't have the material. I have in mind the material that is described in the original bill. The material that was lacking for the completion of the rig was the leg material, 2 by 10's. You couldn't build a rig without the leg material. You could put the floor on the sills then, but you [476] couldn't build a derrick. It would hardly be worth while starting on a rig without having the leg material. I didn't let Ridenour & Webber go. I kept them as long as I could, and they got out on their own accord. There was difficulty in getting rig-builders in the months of September and October. I don't recall exactly the number of men on this land from the time the lumber was put on there until the rig was built. There was all the way from 3 to 8 or ten. These men were getting ready to operate, and building the road and sump-hole for the derrick, clearing brush.

Q. And how early do you remember that you first had these two or three or ten men on the land?

A. I believe it was the latter part of September.

Q. Well, did you leave that lumber stay on the land alone for any time at all without anybody on there?

A. I don't remember. They may have been on there the same time the lumber went.

Q. Anyway, they were there shortly after, were they? A. Yes, sir.

We made efforts on behalf of the people that operated this land to get water there. I spoke to Mr.

(Testimony of A. H. Butler, Jr.)

Elliott, who was the field man for the Santa Fe Water Company. He said when he could get around to it he would try and give us water. I didn't have anything to do with the ultimate getting of the water, but I know that they got it from the Union line that went to section 10. And the Union got the water from the Santa Fe, I believe; I am not sure.

Cross-examination.

(By Mr. HALL.)

At this time myself and my associates were not engaged in sending rig timber out to any other section than the northwest [477] quarter of Section 15.

Q. You were not improving or developing any other lands except that particular land?

A. Not myself. Our company was interested in the south part of the land, but that was under the superintendency of Mr. Van Slyke.

Barnesdale, Drake and Yancey were developing that part of the land. I don't know where they were getting lumber about that time. I didn't go down onto that part of the land very much. They were hauling a lot of supplies from the supply houses, pipe and materials like that. Whether they hauled lumber, I don't know. They had a derrick up early in the summer of 1909. They were drilling by the time I got there with our lumber in September, 1909. Barnesdale, Drake and Yancey commenced their operations on the south half of the section along about April or May, 1909, I think; I am not sure of that. I was in McKittrick when they commenced

(Testimony of A. H. Butler, Jr.)

their operations. I don't know how far down they were on their wells when we commenced our operations. They were getting their water from a pipeline from Crocker Springs. I was there when that system was put in. It took them ten or fifteen days in laying the pipe-line. I don't know how long it took to put the wells down. They were in full blast, running their wells with water, and all necessary materials and supplies, at least early in June, 1909. That was considered shallow territory. It all depends upon the formation as to the amount of water that it will take to drill the first few hundred feet of a well. It is all according to the formation, but I should imagine it would take just about as much water for the first four hundred feet as for the next four hundred. I have drilled. The formation on this [478] particular tract of land is shale. Shale is easy to drill in some cases; there is some awful hard shale. The purpose of the water is to make the formation stand up and keep it from caving in. The shale formation encountered on this land does not stand up better without water than other formations. It stands up easier than sand and boulders. Shale lays in layers, and there is a good many crevices, and it is liable to give way in time. Under ordinary circumstances it would take from 100 to 125 barrels of water per day to drill down through this shale on Section 15. I don't know when they reached oil on the south part of the section. I think they had reached oil when we commenced our operations. I had nothing to do with our operations on this

(Testimony of A. H. Butler, Jr.)

tract when they reached the oil. The drilling commenced by Barnesdale, Drake & Yancy on this section was considered pioneer operations. During that summer I lived in McKittrick and spent a great deal of time up north of McKittrick. I was down in this neighborhood frequently during the summer. There was a great deal of jumping going on on account of this activity out on the frontier. Our people had considerable trouble with our lands over this question of jumping. Some people jumped Section 30, and we lost that section on account of that.

Q. What was the factor which induced you to finally give this order to the King Lumber Company for this drilling rig?

A. I was advised from—by either Mr. Strong or Mr. Elliott that they were ready to commence drilling for oil.

Q. Was that the first instruction you had in regard to that? A. Yes, sir.

Q. How long after you received those instructions from Mr. Elliott or Mr. Strong did you go to the King Lumber Company? [479]

A. Probably 15 or 20 minutes.

Q. Within 15 or 20 minutes. And did you telephone to the King Lumber Company at Bakersfield for a credit on this material?

A. Mr. McWane did.

Q. Mr. McWane did in your presence?

A. Yes, sir.

Q. And you were there at the time you gave the

(Testimony of A. H. Butler, Jr.)

order and he telephoned in? A. Yes, sir.

Q. To Mr. King at Bakersfield? A. Yes, sir.

Q. And the credit for your company or your associates was negotiated at that time over the telephone?

A. Yes, sir.

Q. Now, what authority did you have at that time from Mr. Strong or Mr. Elliott in regard to this drilling? A. Verbal authority over the phone.

Q. From where? A. Los Angeles.

Q. And what did they tell you to do, order the lumber?

A. Told me to order the lumber for a complete drilling rig, and to haul it out to Section 15, northwest quarter.

Q. And those were the instructions you had at that time? A. Yes, sir.

Q. Was there any discussion at that time between you and Mr. Strong and Mr. Elliott over the telephone about jumpers bothering the locations out in that neighborhood? A. I think not.

Q. Had you advised them of the situation in regard to jumpers out there at that time? [480]

A. I had told them that there were jumpers down near Taft, and down along Fellows.

Q. Well, it had become at that time—this jumping problem had become a rather serious proposition up through that oil field, had it not?

A. It was not serious, that is, on 15.

Q. Well, when was it they jumped section 30?

A. I don't remember.

Q. It was serious with others, was it not?

(Testimony of A. H. Butler, Jr.)

A. Yes, sir.

Q. A good deal of display of guns and warfare throughout that entire field over this jumping proposition.

A. There wasn't any display of warfare; there was a display of guns.

Q. And those men out there guarding the lands were what were known as gun-fighters, were they not? A. Yes, generally.

Q. And some men were trying to take possession of other men's lands by force of arms, or display of arms? A. Yes, sir.

Q. And that was known throughout that entire field there during that summer, was it not?

A. It was.

Q. This jumping problem was largely centered around lands where there were no structures erected upon them, was it not?

A. That didn't make any difference with some of them.

Q. Structures, or no structures, they jumped any way? A. Yes.

Q. You all felt a little bit safer up in that vicinity, did you not, if you had some sort of a structure erected on your land? [481]

A. Why, I don't think so.

Q. Some of the people merely had cabins on their land, did they not? A. Yes, sir.

Q. Some of the locations that were held under oil land, or supposed oil land locations, were simply occupied by armed men in cabins? A. Yes, sir.

(Testimony of A. H. Butler, Jr.)

Q. And some men merely had assessment derricks upon their locations, did they not? A. Yes, sir.

I spoke to Ridenour and Webber about July or August, 1909. That was before I had my instructions from Strong and Elliott to buy the rig timber for the land. I knew they contemplated drilling very soon. I had no definite instructions to start when I spoke to Ridenour and Webber. I was not myself possessed of sufficient authority to make contracts without any instructions from Mr. Strong and Mr. Elliott. I was acting entirely under their orders and directions on this particular land. I spoke to Ridenour and Webber and told them I might want them to build a derrick, but there was no contract definitely closed at that time. I did not set any date when they should commence the erection of a derrick on this land. We did not agree upon the price. There was nothing said with them about the price, but there was a regular wage scale for building derricks, a contract price. That was generally known throughout the field. There was no definite agreement between us what the prices should be for drilling this rig about which I spoke to Ridenour and Webber. [482]

Redirect Examination.

(By Mr. WEILL.)

I employed Mr. Best. Mr. Best was working for the Brookshire as a tool dresser when I first spoke to him. I first spoke to him about six weeks, I imagine, or possibly two months before the rig went out, before he came to work. He came to work about

(Testimony of A. H. Butler, Jr.)

the time the rig went out. Mr. Best actually came on the land some time between the 15th and 25th of September; I don't remember the dates exactly. I heard Mr. Best testify that he came on about November 1st. I thought he was out there before that time. Regardless of when he came on the land, I spoke to him about six weeks before he came. Mr. Best had drilled for me up north of McKittrick, and I liked his work, and I asked him if he wanted to drill for me again, and he said he did, that he had a tool dresser's job at about half the money, and he was glad to leave that job and come with me. He did not leave right away. He didn't leave because I didn't have authority to take him on at that time, but I knew we were going to start up, and I wanted him to work for me. He couldn't work until the derrick was up. But according to my recollection, he came out some time before the derrick was completed. He was employed for the specific purpose of drilling that well.

Recross-examination.

(By Mr. HALL.)

Q. At the time you first spoke to him, that you place at some month or six weeks before he came out there, you then did not have any authority to employ him, I believe you said? A. No, sir.

Q. You didn't have specific authority then from Strong and [483] Elliott to employ this man, or any other man, to drill that well at that time?

A. I knew they were going to start up very soon, and I spoke to Mr. Best.

(Testimony of A. H. Butler, Jr.)

Q. And that was just a personal matter between you and him? A. A personal matter.

Q. And you didn't employ him definitely?

A. No, sir.

Redirect Examination.

(By Mr. WEIL.)

Q. But your principals ratified what you had done with him, and took what you had arranged?

A. They left it with me to hire what men I wanted.

Recross-examination.

(By Mr. HALL.)

Q. And when did you definitely tell Best to come out and go to drilling?

A. As I formerly said, between the 15th and 25th of September, but Mr. Best's testimony said about the 1st of November.

Q. As soon as you hired him definitely he came on the land? A. Yes.

Testimony of Joseph P. McDonnell, for Defendants.

JOSEPH P. McDONNELL, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

I reside in Watsonville, California. My full name is Joseph P. McDonnell. In the months of August, September and October, 1909, I was an oil well machinery salesman for the California [484] National Supply Company, with headquarters at Santa Maria. I used to make trips over in the oil districts

(Testimony of Joseph P. McDonnell.)

surrounding McKittrick, and had charge of the stores, sort of district manager. The store at McKittrick was under my direction.

I know the property described as the northwest quarter of Section 15, Township 31, Range 22, that was afterwards operated by the Dominion Oil Company. I am the party named in the lease from the North Midway Oil Company to Joseph P. McDonnell, involving the south half of that quarter. I would say the time I became interested in that land was about the middle of September. Mr. W. O. Maxwell and I drove over from Santa Maria. We were looking for some oil property, and we met Mr. Butler and Mr. Frazier, and they said there was 80 acres of land out in Section 15 that could be purchased,—a lease on 80 acres of land that could be purchased. We went and looked at the property and we agreed to purchase it for the sum of \$3,000. We agreed to purchase the lease for \$3,000. Those dealings were with Butler and Frazier. Mr. Butler claimed to represent the British-American Oil Company. As a result of the negotiations with Mr. Butler we made up an agreement, agreed to purchase this here and pay the money as soon as the lease was signed up. Mr. Maxwell stayed there at McKittrick and I came to Los Angeles, endeavoring to get this lease. A memorandum agreement was signed up. Mr. Butler signed on behalf of the British-American Oil Company, I believe. I do not know what has become of that memorandum that was signed at that time. Mr. Maxwell had the memorandum. I don't

(Testimony of Joseph P. McDonnell.)

know what has become of it. I would say that this memorandum was signed about the 20th of September. I fix the date from my understanding the lumber was delivered on the ground there some time about the middle of September, [485] and we took this lease over about a day or two after the lumber was delivered. That is the only way I have of fixing it. I did not see the lumber delivered. I was told the lumber had been delivered a day or two before. I think from what I understand they were hauling it at the time we were there figuring on this lease. The arrangement was that we were to pay for the lumber; we were to reimburse the British-American Oil Company for this lumber, which we did, some time later. We made arrangements with the California National Supply Company in regard to equipment. I told Mr. Frazier, who was in charge of the company there, to set aside a complete drilling outfit for us, that we were going to operate the property. By complete drilling outfit I mean the rig-irons and tools, cordage, boiler, engine, fittings, and all pipe and stuff like that. I believe he did so. As near as I can recall, I would say that the cost of this equipment that I directed Mr. Frazier to set aside would be \$7,500. The lease from the North Midway Oil Company to myself was dated November 20, 1909. This lease was made long after the original negotiations. I must have worked on it six or eight weeks down here. I had it changed a dozen times. In the meantime we were proceeding with our efforts toward the development of the land.

(Testimony of Joseph P. McDonnell.)

Q. You understood, did you, that this arrangement you had with Butler was subject to the approval of the company? A. Yes.

Q. He had no written authority to act on behalf of the British-American in making this lease, so far as you know, had he?

A. Oh, I knew his father was interested in it; I thought he was their agent.

Q. You thought he was their agent, but you wanted the [486] lease from the company, naturally.

A. From the British-American.

Q. And the negotiation over that occupied a considerable length of time, did it?

A. Yes, it was pretty hard to get the company together down here.

I think I left the field a day or two after these negotiations. I doubt whether I was over there at any time again before the rig was up. My knowledge of anything that happened on the land itself between the time I took this memorandum and the time the rig was built would be purely hearsay. I intended to develop this land at the time I made these arrangements. I had the financial means necessary to carry it on.

Cross-examination.

(By Mr. HALL.)

I first learned that I could secure a lease on the south half of the northwest quarter of Section 15 about the 17th to the 20th of September. I learned that from Mr. Frazier and from Butler. Mr. Frazier was employed by the National Supply Com-

(Testimony of Joseph P. McDonnell.)

pany at McKittrick. That was the same company I was working for. That company was engaged in selling oil well machinery. I was engaged as an agent or directing manager of that company. Mr. Frazier said there was an 80-acre lease to be had out there, and he thought it was pretty good property, and it could be had very reasonable, something along that line. He said that he and A. H. Butler, Jr. had this 80-acre lease. I met Butler at the time of this conversation. He and Frazier were together at that time. I believe we went out and saw the land at that time. I think Mr. Maxwell and I went out first; I think we had a roadster [487] machine. Mr. Maxwell and I were associated together in the lease. Mr. Frazier did not become a partner of mine in that transaction. Butler said the British-American wanted to lease that land, and if we would go ahead and operate it they would give us this lease for \$3,000, which we agreed to take.

Q. Did Mr. Butler exhibit to you any writing as his authority to act as agent for the British-American Company?

A. He did not. At that time we called up the the British-American in Los Angeles by telephone.

Q. He did not assume to act for the British-American Company in that transaction?

A. No; I understood he was an agent, though.

Q. Beg pardon?

A. I understood he was their agent, is all.

Q. Did he say he had authority to sign any lease or anything of that sort?

(Testimony of Joseph P. McDonnell.)

A. Well, I don't remember.

Q. Did he sign any lease?

A. He did not; no, sir.

Q. What was the substance of this memorandum that you wrote up?

A. That he agreed to furnish a one-eighth royalty 80-acre lease on this land for a consideration.

Q. For a consideration, and you agreed to enter into the lease within a certain time?

A. We agreed to enter into the lease immediately, as soon as he could get it fixed up with the British-American.

Q. As soon as he could get it fixed up? A. Yes.

Q. This memorandum then was more of an option for a lease, [488] was it not?

A. Well, yes, I would say so.

Q. It simply said it was an option, that you would agree to make this lease if he could get the British-American Oil Company to consent to it?

A. No; we dealt right with the British-American Oil Company. They absolutely told us we could have this lease. I called up W. Z. McDonald down here, and he said everything was all right, to come down and we would fix the matter up.

Q. Well, did you come down then?

A. I did; yes, sir.

Q. When was it you came down to see McDonald?

A. Well, I would say it was immediately after we made that transaction in McKittrick, in a day or two.

Q. And you went down there then within a few

(Testimony of Joseph P. McDonnell.)

days after the 20th of September? A. Yes, sir.

Q. And you conferred with Mr. William Z. McDonald? A. Yes, sir.

Q. Did you exhibit to him this memorandum you had entered into, or this option? A. I did not.

Q. You told him of it, did you? A. I did.

Q. And did he ratify it?

A. He ratified it; yes, sir.

Q. How long after that was it before you actually came to an understanding with Mr. McDonald that you were to have a lease upon the terms which eventuated and were incorporated in the lease of November 20, 1909? [489]

A. Well, I think it was pretty near all that time. There was one particular clause in it there, that we would not lease, sublease this property in case we wanted to do it, and we had a hard time to get on. There were some people lived in Santa Monica, I believe, that were the original owners of the lease.

Q. And you were haggling back and forth over the terms of this lease until November 20, 1909?

A. Well, I would not say that.

Q. What is objectionable in that statement, the term haggling?

A. Well, McDonald was away a good deal, and I was away a good deal, and he assured us we were going to have the lease and we went on spending our money, and on the 7th day of November, we paid Butler \$1,500, so we would not have paid that if we were haggling up to the 20th on that lease.

Q. When did you finally come to terms on the

(Testimony of Joseph P. McDonnell.)

lease? You said you had trouble over this clause.

A. We practically came to terms when I came down, because McDonald said, "Anything you want, I will get for you, but it is hard to get these people together."

Q. But you and McDonald came to terms?

A. Yes.

Q. The trouble with it was McDonald could not get the people who were really responsible to agree to this clause, was that it?

A. Yes. McDonald was president of the company, I believe, at that time.

Q. And he could not get the board of directors—

A. The other directors, together.

Q. — to agree on this clause as to subleasing, and that was the bone of contention between you, or the reason why the [490] lease was not closed until November 20th? A. Yes, sir.

I could not say when the first improvements of any sort were put upon the property after I came down to See McDonald, because Mr. Maxwell was looking after that end at McKittrick. I think there was a small amount of lumber on the property when I went out to see it about September 17th or 20th. I believe there were some men there. I couldn't say how many. We didn't stay very long. There were men scattered all through that country. I couldn't tell whether they were on—there were no stakes; I could not tell whether they were on that particular piece of property or on an adjoining piece of property, but they were hired by Mr. Butler and Mr.

(Testimony of Joseph P. McDonnell.)

Maxwell, I believe. Absolutely I know that of my own knowledge. I absolutely know that we hired men there, but when we went out to see it we did not have any hired men at that time. There was men on the ground. I don't know what they were doing; they were watchmen, I believe. I believe they were just there as watchmen. They were not armed that I know of. There was considerable trouble about jumping in that vicinity at that time, and a great many people had men stationed on the land simply to guard it and keep off jumpers. After my visit there about September 17th to 20th, I used to go over there every month or six weeks. I would say I was there six weeks, I guess, after the 20th of September. I believe there was a cabin erected on the property some time in October. I believe Mr. Maxwell put it up; I am not positive, though. I did not have anything to do with the work of building the cabin. Mr. Maxwell had complete charge of the work. Personally I would not want to fix any time when the cabin was put up. [491]

I paid A. H. Butler \$1,500 by check on November 7th. The check was on T. R. Finley. That was half of the \$3,000 for the lease. I don't know whether that was his commission or whether that was to go to the British-American Oil Company. I don't know what became of that memorandum. It was prepared in the office of the National Supply Company. I do not remember whether it was a type-written agreement. I think it was something we sketched up among ourselves. I don't know whether

(Testimony of Joseph P. McDonnell.)

there was a copy made of it. I never had it in my possession. It was taken over by Mr. Maxwell, Mr. Maxwell and I did not afterwards organize a company. We sold 40 acres of the lease—we gave 40 acres to the Dominion Oil Company to operate the 80 and take up our obligation on the 80. We were obliged by our contract of November 20, 1909, to drill wells on the south 80 acres of this northwest quarter. We then subleased 40 acres to the Dominion Oil Company, and I believe they were the people who actually spudded in the first well. Mr. Maxwell and I never did spud in a well there. We afterwards sold the north 40, or subleased the north 40 to the Bankline Oil Company. Neither Mr. Maxwell nor I, nor anyone associated with me in this lease of November 20, 1909, ever did any actual development upon the property. We never did any actual drilling on this property.

Q. You said you asked somebody—Well, did you and your associate, Mr. Maxwell, ever do any actual development of any sort? A. Yes, sir; we have.

Q. What did you do?

A. Well, we operated in Santa Maria.

Q. I mean on this particular quarter.

A. Actual operations?

Q. Yes.

A. No, not drilling operations, we didn't. [492]

Q. Well, anything looking to drilling?

A. Oh, yes.

Q. What did you do?

(Testimony of Joseph P. McDonnell.)

A. Mr. Maxwell went ahead and got a rig up and looked after the preliminaries.

We built the rig. I made some arrangements, had some talk with a representative of the California Supply Company. That was the company I was working for. Mr. Frazier was the man I made these arrangements with. He was one of our sub-managers, under my direction. I would say I had this conversation with him just at the time we took this lease. I told Mr. Frazier we were going to operate it and we [493] wanted an outfit. I believe part of this outfit was hauled out to the land. I couldn't tell you when it was done. Personally we did not purchase this complete outfit that I asked Mr. Frazier to set aside.

Q. Personally that contract or that arrangement was never consummated then?

A. No, the material was purchased.

Q. Well, was it to your knowledge purchased by you and Mr. Maxwell?

A. Not to our knowledge, but it was purchased by Mr. Maxwell, I know.

Eventually, practically all of the material ordered at that time was purchased. No one can tell what they want or what they need in an outfit until they get started. At the time I talked to Mr. Frazier we knew the essential parts we needed. We specified all the leading parts we needed. We told Mr. Frazier we wanted a complete outfit. Mr. Maxwell and I did not afterwards pay for that outfit ourselves. We did not pay for any part of it.

(Testimony of Joseph P. McDonnell.)

Q. You said in your direct examination, in answer to Mr. Weil's question, that this contract of November 20, 1909, was changed a dozen different times. What did you mean by that, and of what did the changes consist?

A. Well, I think we had a clause put in that we would not have to operate if oil got below 30 cents a barrel; and I think there was a number of little clauses that is in all those leases; and every time we would want a change, Mr. McDonald would have to get these people together, and they always agreed on the changes.

Q. Now, would you sign up the contract and then want to change it, or did you do that before it was finally signed? [494]

A. Before it was finally signed, we got the lease to our—

Q. To your liking? A. To our liking, yes.

Q. When you would agree on one clause, you would say, "We want something else in here, want some other change," and McDonald would have to see his people again and agree upon that change?

A. Yes.

Q. And so that went on a dozen times, as you say?

A. Well, there were a number of changes, yes.

Redirect Examination.

(By Mr. WEIL.)

Mr. Frazier and I both understood what was meant by a complete outfit. That was a generally understood term in the field.

Testimony of William O. Maxwell, for Defendants.

WILLIAM O. MAXWELL, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

My name is William O. Maxwell. I reside in Los Angeles. I am a consulting engineer. During the year 1909 I was in the employ of the Associated Oil Company, in the Land Department, until the latter part of the year; I think I resigned in either the latter part of August or early in September of that year. The Associated Oil Company is interested in the oil business. I have been associated in various capacities in connection with the oil business since April, 1902. I know the northwest quarter of Section 15, 31-22, sometimes known as the Dominion property. I had business dealings with that property. To the best of my recollection, sometime during September, 1909, Mr. McDonnell and [495] myself went from Santa Maria to McKittrick, with the intention of getting some properties to develop for ourselves and associates in Santa Maria. We were assured at the time we went over by these associates of ours that they would assist us in financing anything in reason that we could get, and as we had been in numerous deals with these same people, their assurance in that matter was sufficient for us. So we looked over the ground generally and had probably three or four propositions under consideration.

(Testimony of William O. Maxwell.)

The best of these, to our notion, was the one now known as the Dominion Oil Company. We met A. H. Butler, Jr., and C. E. Frazier in McKittrick at that time. Mr. Frazier brought to our attention the fact that Butler was offering a lease on this particular property, and I think introduced us to Butler. We looked over the property, and I am not quite certain we went out onto it itself, but we could get a general idea from the map as to the desirability of the location. And we concluded if we could get a satisfactory deal on that particular property, we would like to have it, and we thought we could recommend it for development purposes. So we entered into a preliminary agreement with A. H. Butler, Jr. This agreement was drawn up between Butler and McDonnell. The principal part of it was that we were to assume all indebtedness—I have no idea where that agreement is. I have not seen that agreement since I turned over the affairs of the Dominion Oil Company to Mr. Brynes in 1910. I am under the impression that at that time it was with the general records of the company. We agreed to begin operations for the development of the property immediately, and to pay a bonus of \$3,000 for an eighth royalty lease on this particular 80 acres. To the best of my recollection, those were the principal features of this preliminary agreement. [496]. As soon as this was executed, or as soon as it was signed by Mr. Butler and Mr. McDonnell, McDonnell left for Los Angeles to take up the matter of getting the lease with the British-American people ratified by

(Testimony of William O. Maxwell.)

them, all of the points of which would be to the satisfaction of both parties. At the time that we executed this preliminary agreement, within a day or so afterwards, McDonnell left for Los Angeles to take up the matter of getting the agreement ratified and a permanent lease drawn up with the British-American people; and I proceeded to do what I could about getting the development work started. That was about the 20th of September. There was some rig lumber on the property when this arrangement was made. It was not quite a complete rig; somewhere in the neighborhood of fifteen to twenty thousand feet, I would imagine. The first thing we did was to place an order with the California National Supply Company at McKittrick for a complete drilling outfit and equipment, which would consist of rig-irons, boiler, engine, cordage, casing and small tools. And then we took up with several parties around McKittrick the question of getting rig-builders for building the rig. All of the rig-builders were evidently very busy at that time, and it was almost impossible to get anybody right away. I saw several parties personally, and had my friends all looking for rig builders. I also took up with the Santa Fe and the Stratton Water Company the question of getting water for development of the property. The only way I have of fixing this date is that as soon as we entered into this preliminary agreement I started to get all lines moving to the best of my ability, to get the development work started, and just what dates I did these certain things I am unable to state at the

(Testimony of William O. Maxwell.)

present time. According to my [497] best recollection, the written agreement was made the 20th of September. From that time I used all of my efforts toward getting this development work started. As I stated before, I attended to all these various matters that could be attended to, and did that immediately after getting this preliminary agreement. As I stated before, it was very difficult to get supplies, rig builders, water, and other essentials for the work. I was not doing any other work just at that time. I was devoting my entire attention to this project. I was living in McKittrick at that time. I would go down to the property every three or four days, possibly. There was not anything that I could do there in particular. I saw Mr. Levet of the Santa Fe Water Company. I asked Mr. Levet if we could get immediate water connection.

Mr. HALL.—I object to any testimony as to conversations with Mr. Levet, unless it is shown it was prior to September 27th.

The COURT.—Oh, I think it is proper to show what they did even after that date, if it is a continuous operation, as showing their good faith. Go ahead.

Mr. HALL.—Exception.

I asked Mr. Levet how soon we could connect up with his company for water, and he advised me that he had a long waiting list then, and that he could not assure me of anything under 60 or 90 days. I saw somebody in connection with the Stratton Water Company, I don't remember who it was now, and

(Testimony of William O. Maxwell.)

they advised me that they had all the business they could handle and would not be in a position to take on any new business for some time. I saw Mr. Van Slyke, representing what was known as the Yancey interests at the time, in regard to getting water through his line, which they either were laying or had already laid to Crocker Springs; and he [498] told me that they would not have enough water from that source for their own purposes, he didn't think, but if there was any way he could assist me with some water, he would do so. There were no other available sources of supply of water in the field at that time to my knowledge. The rig material was somewhat slow in being delivered, the machinery and other supplies which were ordered from the California National Supply Company. There was a large amount of development work being done in the field at that time, and they were always short on certain articles. But the delivery of the machinery was not the cause of any delay of our operation, I don't think. The principal delay and trouble was in getting rig builders and getting assurance of any water supply.

Q. Where did you ultimately get the water for drilling this well?

A. We succeeded in making arrangements with the Santa Fe to give preference—that is, some of the other parties, it appeared, were not in so much of a hurry to get started, and they allowed us to come around them, and by connecting up with the line of the Union Oil Company, running from some point I

(Testimony of William O. Maxwell.)

think in section 16 to their Sheridan lease on section 10, we were able to get water sooner than we expected to according to our first investigations in the matter. I was on rather friendly terms with the people of the Union Oil Company at the time, and I saw Mr. F. F. Hill, their general superintendent, and asked him if they would have any objection to us connecting into their Sheridan line, and he said he didn't think so, but he advised me to see Mr. Becker, who was their local representative, which I did, and Mr. Becker said it would be entirely satisfactory to him. So we proceeded to connect up with this line, and had water there by the [499] time the derrick was erected.

I do not think the Union had completed their line to the Sheridan lease at the time we cut into it. We got water out of that line before they did. There was not a sufficient amount of lumber on there for a complete derrick when I first went there. I took that matter up with Butler, and he assured me he was doing everything he could to get the shortage attended to. It is my recollection that the principal shortage was in what we call leg stuff. We could not have gone ahead and built the derrick even if we had had rig-builders. The only thing we could have done would have been to frame the ground timbers and cut up such lumber as we had there and get it ready for running the derrick. We did that as soon as we could get the men to do it.

Q. Now, when you first made this arrangement, which your recollection is was on the 20th of Septem-

(Testimony of William O. Maxwell.)

ber, did you do anything on the land itself from that time forward in reference to engaging any men, or anything of that sort?

A. Butler had some men engaged at the time, but we assumed the expense of those men, from the time of our taking over the property, or the signing of the preliminary agreement.

Q. Where were those men?

A. Those men were staying on the property.

Q. And what were they doing?

A. They were not apparently doing much of anything up until the time I went there, and I instructed them to clean up as much as they could around the place, and cut the sagebrush, and do a little pick and shovel work on the roads in there and get them repaired so that we could haul over them.

Q. And did they do that? [500]

A. They did.

Q. Was there any other work done on there? To refresh your recollection, was there a dam and a sump-hole built on there, under your instructions?

A. I don't think so.

After this south 40 acres was disposed of to the Dominion Oil Company, I became manager of it. I continued as manager of the Dominion until the spring of 1910, I think the first of March. It was under my supervision that this well was drilled. We first struck oil in this well either on Christmas Eve or Christmas Day of 1909. My recollection is rather hazy as to what depth that was, but it was somewhere in the vicinity of 500 feet, if I remember

(Testimony of William O. Maxwell.)

correctly. The well was afterwards drilled to about twenty-one or twenty-two hundred feet. They got no oil below the first strata. That is the first oil that we ran into, in the vicinity of 500 feet, and I think we had 110 feet of that sand. After we got through that, we got nothing more. We drilled to a depth of 2,100 and got nothing, and then the well went back and produced. We backed up and pulled, I think, the 8-inch casing out, and cemented, put in a cement plug, below the bottom of the oil sand—I think it was a cement plug, I am not certain, but I know that we had some deep water that we had to dispose of, which we did. The plugging of the well and backing up was done after I left. I think that well is still producing. I have not seen that well in probably five or six months. I would not be certain that it was producing the last time I saw it. They had quite a lot of trouble with it in the last two or three years, casing trouble. It did produce for a number of years to my knowledge. My impression is that up to the time I left they spent about eighteen or twenty thousand dollars in drilling that well. That was up to the middle of March, 1910. [501]

Cross-examination.

(By Mr. HALL.)

I am not exactly what you call a petroleum engineer. I have had a great deal of experience along the line of drilling wells and handling oil properties; I devoted practically all of my attention to that for the last 16 years. I worked at the theoretical end

(Testimony of William O. Maxwell.)

and at the practical end of it, both. This territory up on Section 15 proved to be shallow. At the time Mr. McDonnell and I went to see Section 15, I don't remember how deep the Yancey crowd had drilled their well on the southwest quarter; I am not sure whether they were into the oil at that time or not. When I first saw them there in September, 1909, I would not be positive, but I rather think they had some oil showing. My relations with the Barnesdale and Yancey people were friendly. At the time I negotiated for this land, I think the nearest development was at Bear Creek. At the time I went to make negotiations with McDonnell we had knowledge of the wells of the Majestic, the Bear Creek and the Fenton. We did not really think it would be shallow, because everybody in that district at that time was under the impression that there were two oil zones; that the first of them would probably be shallow, but the second would be anywhere from 2,000 to possibly 3,000 feet, and that the second would be the gusher sand; which theory afterward proved to be entirely out of line with the actual conditions. The gusher sand never materialized in that vicinity. That quarter proved to be comparatively easy to drill. We didn't have any trouble getting through the sands in the first well. There was no delay whatever about drilling the first well; after we got started we had no delays. Mr. Frazier introduced me to Mr. Butler. Mr. Butler told me that [502] he was the agent for the British-American Oil Company in the transaction.

(Testimony of William O. Maxwell.)

Q. Did he say anything to you about the North Midway Oil Company?

A. I don't remember that he specified definitely either one or the other; he stated that he was agent for the parties who had control of the land.

He referred us to W. Z. McDonald, M. Z. Elliott, and L. W. Andrews as the principal ones in the organization. I knew Mr. Andrews by reputation at that time. The substance of this memorandum was, to the best of my recollection, a simple agreement stating that in consideration of \$3,000 cash we would be furnished with a one-eighth royalty 20-year lease on this particular property. It seems to me that we made some kind of a payment at that time, but I wouldn't be positive in that matter. If it was made it would be either by personal check of Mr. McDonnell or myself, one or the other. There is nothing that I can recall to refresh my memory as to whether we did or did not make such a payment at that time; I tried to look the matter up and I didn't have any success. I haven't found anything in my books or papers that indicate that I passed a check at that time for that purpose. My recollection is that the memorandum provided that some time in the future the people whom Mr. Butler was then representing would make us a lease of the south half of the northwest quarter of 15, and we would pay a bonus of \$3,000 cash and one-eighth royalty of all oil. Mr. McDonnell carried on the first negotiations with the people who were supposed to have the right to lease this land, and afterwards called me in. I have no

(Testimony of William O. Maxwell.)

way of placing the date when I was called in on those negotiations. It was possibly a month after the preliminary [503] agreement. It was some time after I was called into the consultation before the lease was finally consummated and signed. I don't really know how long after November 20 it was before we assigned our lease over to the Dominion Oil Company. I can't really give a good intelligent guess as to the time. The Dominion Oil Company was the one that assumed all the obligation in the matter and spudded in the well. I think that well was spudded in about the first week in December, 1909. When I first met Mr. Butler in McKittrick I went out to see this quarter at that time. Mr. McDonnell, Mr. McKittrick and I went out together. There were some men on the property at the time.

Q. What were they doing at that time?

A. They didn't appear to be doing much of anything in the way of work; they didn't seem to have anything to work with.

Q. Was there any cabin or any shelter there for them at that time? A. I think there was a tent.

Q. A tent there? A. I think so.

Q. How many men were there?

A. There were either four or six; I am not certain now.

Q. And they were not working at any particular job that you saw them doing that would lead to the development of the property, were they?

A. Not just at that time.

Q. Mr. McDonnell told you that they were his

(Testimony of William O. Maxwell.)

men; he had them employed out there at that time?

A. Mr. Butler.

Q. Mr. Butler, I mean. A. Yes. [504]

Q. Did he tell you what he had them out there for?

A. He told me he had them there to act as watchmen, as there was some danger of jumpers in the country, and also as soon as they could be supplied with anything to work with they would start to work.

We took over the control of this 80 acres right away. We took it over as soon as the preliminary agreement was signed, and that was prior to that time that I was out there. The men were kept there by me. There were either four or six of them; I could not be positive. I gave them some instructions as to what to do. I did not stay there to see that they carried out those instructions. I would go back there sometimes every day, and sometimes it would be three or four days before I could get out. The lumber that was there was not sufficient to build a rig when I got there. I asked Mr. Butler what he had done in regard to filling the requirements, and he said that the order was placed for the lumber with the King Lumber Company, and they had a shortage in those particular items at that time. I didn't go to see the King Lumber Company myself. I took Mr. Butler's word for it. I made no investigation directly with the King Lumber Company.

Q. You say that the drilling material,—that is, the complete outfit,—did not delay you any at all in your drilling? A. No.

(Testimony of William O. Maxwell.)

Q. When you got ready up to that point, you could go right ahead? A. Yes.

I spoke to Mr. Van Slyke in regard to Mr. Henry going out and working on the property. I can't say positively when it was [505] I spoke to Mr. Van Slyke, but it was within two or three days after the beginning of our negotiations. Mr. Henry did not get out there to build this cabin until the latter part of November. I personally paid part of this \$3,000 that was finally paid to the British-American Oil Company. It was afterwards refunded to me. That was paid to A. H. Butler, Jr. Within a week after the time of the beginning of our negotiations, I spoke to Mr. Levet about the water situation. It was possibly a month after that that I spoke to Mr. Hill of the Union Oil Company about water. As we could not get water from the Santa Fe, it would not be of any particular advantage to us to see the Union people. We were on friendly terms with the Santa Fe people during all of this time. The Union line was not laid across this northwest quarter when we took it over from Butler. I think they completed that line in November. We did not make any effort to lay any water line to the property from any place prior to the time the Union Company's line was laid, because we had no plant we could lay from. We did not try to get any water through the tank-car system. There was some drilling done out there during that time with water from tanks. I did not make any application to the Bakersfield people to ship our water out in tanks. The only recollection

(Testimony of William O. Maxwell.)

I have of making an application for water was to the Santa Fe, the Stratton and the Union. I did not investigate the question of drilling wells up at Crocker Springs and trying to get water from that point. I knew Mr. Yancey was getting water from there. I made no attempt to bring the water down from that point. Mr. Yancey informed me that they had all of the water rights down at Crocker Springs. Through Mr. Van Slyke I applied to Mr. Yancey for authority to bring the water down there. We never applied for [506] the privilege of drilling wells and putting in any pipe-lines. We applied for the privilege of taking water from their system. We did not apply for the right to dig wells and bring the water down from there independently of their system.

Q. These men that you set to work out there, was that essential to the development of the property?

A. It was essential that the men be there to do what they could, to push the work along as fast as they could. It probably would not be considered essential in the light of what we know at present, to have them there, but we thought we had better have them there because men were scarce and if we could get men we had better get them.

Q. Were they there for the purpose of keeping people from jumping the property? Did you have that in view?

A. That was always a possibility.

Q. You thought at that time that would be protection to your rights there to keep those men there,

(Testimony of William O. Maxwell.)

so if anybody came along to jump your land they would be there to prevent them from doing it?

A. It showed our possession of the property.

After we took this land there was some attempt to jump the property, we had some little argument a time or two, but nothing of any importance. No one was killed, but people came on there to take possession of it if they could. Mr. Cunningham came on, and we probably had some influence with him. [507]

Testimony of F. J. Burns, for Defendants.

F. J. BURNS, a witness called in behalf of the defendants, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. WEIL.)

My name is F. J. Burns. I reside at McKittrick, California. I am field manager of the Dominion Oil Company. I have been field manager of that company since March, 1910. When I became manager of the Dominion Oil Company all of the records of the company, so far as I knew them to exist, were placed in my custody. A little after that time I became a justice of the peace. I finally took the records of the Dominion Oil Company into the new hotel, a brick hotel that had been built at McKittrick; I had them up at my office there. That was my regular justice of the peace office and the one which I occupied as manager of the Dominion. That office was burned up in May or June, 1914. The building was completely destroyed, and all of

(Testimony of F. J. Burns.)

the records in it burned up. We did not recover any of those records at all except those that happened to be left out on the lease. I have been in the oil business sixteen years. I was working for the Brookshire Oil Company prior to the time I worked for the Dominion Oil Company. In September and October, 1909, I was working on Section 24, 31-22, a little over two miles from the property in question. During September and October and November I went over to the property in question. I knew the parties who were interested in that property. They were A. H. Butler, Jr., and C. Frazier. I was there probably four or five times during September and October. The first time I went over I think Mr. Butler came in and wanted to take some men and some supplies, and I had a touring car there that I had driven over [508] from Santa Maria, and he asked me to take him out with the supplies and these men, and I took him out. I do not remember about when that was. It was in the early part of September, I believe. I was over that property and past that property during September and October, because the road goes through the Santa Fe there, goes through that way, and sometimes we would go that way. I saw some lumber on the property when I went on first. That was later than the first of September, though. It was during the month of September. I do not remember whether I was on the property between that visit and the time when the rig was completed. They got oil on that property on Christmas Eve or Christmas Day of 1909.

(Testimony of F. J. Burns.)

Roughly speaking, I should say the Dominion Oil Company spent seventy-five to one hundred thousand dollars on that property. They have drilled four wells. The other improvements consist of a water-tank, two 1500-barrel storage tanks, numerous pipe-lines, part of the material for another well purchased, electric motors installed in all four wells, sump-holes dug, roads made, four buildings put up, one of which burned down and had to be replaced, tool-house and blacksmith-shop, and garage; all necessary things for a permanent camp are used there. Our monthly production there is about 6,600 barrels. These wells are producing. Number one well collapsed; she is only producing about 10 barrels a day part of the time.

I remember a representative or special agent of the Land Office or Department of Justice coming on our land to talk to me about development work there. That was about two years ago, I think.

Cross-examination.

(By Mr. HALL.) [509]

These wells have been producing right along since the first well came in in December, 1909. To-day it is the intention of the Company to continue producing. Our No. 1 collapsed. This was the second time it collapsed. The sand heaves in and squeezes the casing together, and you can't get your tubing down to the bottom and don't get a proper suction for the oil. We have to keep cleaning it all the time. There is no water in those holes up there. When I first went over to the property with Mr. Butler in

(Testimony of F. J. Burns.)

September, 1909, I found some rig timber on the ground. There were men there at the time; three or four came out to meet us when we took these other men there. I don't know whether there were any buildings erected. I know there was a little lean-to, but I don't know whether there was a building on it or not. The men were camping under this lean-to. I heard quite a little about the trouble with jumpers around in that vicinity; they tried to jump the Brookshire, too. These men that we took out there would act as guards as well, I suppose, as other things we wanted them to do. There was no derrick or drilling going on at that time. I was not familiar with the property until about December I got interested and used to go out with Mr. Maxwell. That was when the drilling commenced.

Mr. WEIL.—We offer the following stipulation:

“IT IS STIPULATED between the counsel for plaintiff and counsel for defendants that Dr. W. J. Davis, who is now in Arizona, would, if present, testify as a witness for defendants:

“That at the time arrangements were made in December, 1907, for locating the lands in question in this case under the mining location known as Zee No. 8, and for locating other lands for and on behalf of the groups and the association referred to in the evidence of Roy Jones and others, the M. Z. Elliott group consisted of M. Z. Elliott and Dr. W. J. Davis, and that they were interested equally and continued to be interested equally in said transaction and locations, and that M. Z. Elliott represented this group

in what was done [510] with regard to placing the title of the property in the hands of trustees and conveying the same to British-American Oil Company, and that he held the stock of British-American Oil Company, $\frac{1}{2}$ thereof belonging to himself and the other $\frac{1}{2}$ to W. J. Davis, until sometime in 1911, when, at the request of Dr. W. J. Davis, the $\frac{1}{2}$ of said stock owned by him was transferred to the wife of Dr. W. J. Davis, with the exception of a few shares, which were transferred to said Davis.

“IT IS STIPULATED that the foregoing shall be treated as though testified to and as the evidence of said Dr. W. J. Davis.”

Mr. WEIL.—I offer here the proof of labor that was filed on behalf of the British-American Oil Company on the 6th day of January, 1910, the proof of annual assessment labor, which appears had been recorded on January 7, 1910, in book 75 of mining records at page 107 in the office of the county recorder of the County of Kern, and ask that it be marked Defendants' Exhibit “E.”

Mr. HALL.—We want to object to this, may it please your Honor, on the ground that it is a self-serving statement; that it includes therein conclusions instead of a detailed statement of the facts, and is incompetent, irrelevant and immaterial.

The COURT.—Well, it will be admitted for whatever it is worth.

Defendants' Exhibit “E” is as follows, to wit:

Defendants' Exhibit "E."**"PROOF OF LABOR.**

"State of California,

"County of Los Angeles,—ss.

"BEFORE ME, THE SUBSCRIBER, Personally appeared M. Z. Elliott President of British-American Oil Company who being duly sworn, says that at least Six hundred Dollars worth of labor or improvements, consisting of lumber for derrick and cabins. Said derrick and cabin were purchased and placed on the ground prior to the 23rd day of September, 1909, and since which time barring delays occasioned by the inability of the King Lumber Company to furnish the balance of lumber required for the derrick, the work has proceeded without intermission to the discovery of oil bearing sand at a depth of approximately 420 feet. The cost of the work done and performed on the said north west quarter of Section 15, Township 31, South Range 22 East, Mt. D. B. & M. [511] during the year 1909 is in excess of Seven Thousand Dollars (\$7,000.00) performed or made upon the north west quarter of Section 15, Township 31 South, Range 22 East Mt. D. B. & M. . . . Mining Claim, situated in North Midway or McKittrick Mining District, County of Kern and state of California, during the year ending December 31st, 1909. Such expenditure was made for the benefit of British-American Oil Company

owner of said claim, for the purpose of holding said claim.

Signature, (Signed) M. Z. ELLIOTT.

Subscribed and sworn to before me, this 6th day of January, 1910.

(Seal of Notary Public.)

(Signed) ARMA B. DESSAU,
Notary Public in and for the County of Los Angeles,
State of California.

No. 50. PROOF OF LABOR.

(On back thereof appears the following:)

PROOF OF LABOR. Filed, ———, 19—. Recorded at Request of M. Z. Elliott, Jan. 7, 1910, at 40 min. past 8 A. M., in Book 75 of Min. Recs., page 107, Kern County Records. (Signed) Chas. A. Lee, 2-4-50." [512]

Mr. WEIL.—It is admitted that if John Barneson, president of the Bankline Oil Company, was called as a witness in this case on behalf of the Bankline Oil Company, and individually if called as a witness on his own behalf as to the north 80, that he would testify as alleged in the answer, paragraph 4, of the affirmative defense, as amended.

Mr. HALL.—Yes. [513]

Mr. PRINGLE.—I offer and read in evidence the lease that was made between Joseph McDonnell and Dominion Oil Company, dated November 21, 1909, as follows, to wit:

“THIS AGREEMENT made this 21st day of November, 1909, between JOSEPH McDONNELL of Santa Maria, California, first party, and DOMIN-

ION OIL COMPANY, a Corporation, second party:

“WITNESSETH: That whereas, first party holds a lease from North Midway Oil Company covering the S. $\frac{1}{2}$ of NW. $\frac{1}{4}$ of Section 15, Township 31 South, Range 22 East, M. D. B. & M., and

“Whereas, second party desires to secure sublease of the S. $\frac{1}{2}$ of above described property from first party;

“Now, therefore, in consideration of the rents or royalties to be paid to first party by second party and agreements herein contained to be kept and performed by second party, the first party hereby subleases and sublets unto second party all of the S. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of the NW. $\frac{1}{4}$ of Section 15, township 31 South, Range 22 East, M. D. B. & M., in Kern County, California, for the period of 20 years from the 27th day of September, 1909, together with the right to operate, mine, dig, excavate, tunnel, drill for and otherwise develop, collect and obtain, all kinds of crude petroleum, oil, asphaltum, tar, gas and other hydro carbon substances, in, upon and under said tract of land, together also with the right to take, sever, remove, market and dispose of, all and singular said oil and other substances (subject to the payment of the royalty hereinafter provided) out of, from and away from said tract of land; together also with the right to enter upon said property with any and all proper means and appliances and thereon to erect, operate and maintain any and all tanks, rigs, derricks, boilers, engines, jacks, pipelines and other buildings and structures necessary or desirable for use by second party in connection

with its operations for the development and securing of oil from said premises.

“Second party agrees and it is a condition hereof, that it shall take possession of said premises on the date hereof, and that from and after the date hereof, it shall and will at its own expense, take all requisite steps and proceedings to secure and maintain the possession of said property at all times. It is further a condition hereof and second party agrees, that it shall and will, within 5 days from date hereof, commence work on said premises preparatory to drilling and operating for oil thereon and to that end that it will forthwith within five days from the date hereof, build a house on said premises and forthwith thereafter, and as soon as possible, secure all necessary timbers and materials, tools, implements, rigs and equipment for erection of derrick on said premises and for drilling for oil thereon, and as soon as the lumber therefor can be laid on the ground, it will commence the building of a derrick and thereafter, with diligence, will prosecute the construction of the derrick [514] and drilling rig and thereafter will prosecute the work of drilling a well for oil on said premises with diligence to completion thereof.

“Second party further agrees that in any event it shall and will, prior to the 25th day of December, 1909, perform labor on said property in the development thereof of the value of at least \$200.00 and that it shall and will, at its own cost and expense, make all necessary affidavits and proofs of labor covering all of said Northwest one-quarter of Section 15 (in

the name of the British-American Oil Company) filing the same with the proper officials during the year 1909, and that it shall and will perform a similar amount of labor and file similar affidavits each succeeding year thereafter until patents have been obtained on said property.

“Said party further agrees upon the development of minerals in sufficient quantity to enable the acquirements of a United States Mineral Patent, it shall and will at its own cost and expense, take all necessary steps to secure United States Mineral Patent on said entire Northwest one-quarter of said Section 15, the same to be for the benefit of both parties hereto and the British-American Oil Company, and shall be in the name of said British-American Oil Company. First party to repay to second party their proportional amount per acre required to be paid to secure patent on the N. $\frac{1}{2}$ of the S. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of said Section 15. Whenever a patent shall have been secured for said property or whenever oil or other minerals shall have been found upon said property in paying quantities, said S. $\frac{1}{2}$ of said S. $\frac{1}{2}$ of said NW. $\frac{1}{4}$ of Section 15 hereinabove described from such time for the balance of said terms shall be subject to all the terms of this lease.

“Second party agrees that it shall and will prosecute the work of drilling said well with diligence until the same shall have been drilled to depth of at least 2,000 feet, unless oil be found in said well in paying quantities at a less depth.

“Second party further agrees and it is a condition hereof that from the time it commences drill-

ing operations on said property (which shall not be later than December 25, 1909), it shall and will thereafter actively and diligently prosecute the work of developing said property and to that end it shall and will drill to completion at least one well on said property during each and every year for the first ten years of the term hereof, making ten wells in all. It being understood, however, that in case it is unable to drill one well in any year by the diligent operation of one string of drilling tools during said entire year, that, notwithstanding said company's obligation in that behalf shall be satisfied, in case during each of said years it shall continuously and diligently operate for oil with one string of drilling tools during such year or years. Whenever second party shall have found oil in any well in paying quantities the same shall be deemed to be and shall be counted as a complete well for all the purposes of this agreement and whenever second party shall have sunk a well to the depth [515] of 2000 feet although oil be not discovered in paying quantities, same shall be deemed to be and counted as a completed well for the purposes of this agreement. A well producing 10 barrels of oil per day for each of 30 consecutive days shall be deemed to be a well which produces oil in paying quantities. It is understood, however, that second party shall have the right to drill a well to such depth greater than 2000 feet or as many more than ten wells as it desires.

“It is further agreed, that from and after the completion of each well in which oil shall have been found in quantities sufficient to pay to pump, second party

shall pump or otherwise secure and save oil therefrom with diligence at all times, as long as such well produces oil in quantities sufficient to pay to pump, or otherwise secure and save. Second party shall have the right to pump any and all producing wells as long as the same produce oil in paying quantities and such rights shall not be terminated by the expiration of said term of twenty years.

“Second party shall pay on behalf of first party to North Midway Oil Co., and North Midway Oil Co. shall receive as rent or royalty for said property the equal $\frac{1}{8}$ of all oil produced or secured and saved from said property at any and all times during the term of this lease, and on the first day of each and every month, second party shall pay and deliver to North Midway Oil Co. as said rent or royalty, the equal one-eighth of the total amount of oil produced or otherwise secured and saved from said property during the preceding calendar month, after deduction has been made of oil used for fuel on said property, said oil to be delivered to, and be received by, North Midway Oil Co. at the storage tank of second party on the lease, or to be delivered into tanks of North Midway Oil Co. on the lease, or into pipe-line as elected by North Midway Oil Co., and in case of delivery into the pipe-line or into tanks of North Midway Oil Co., second party shall, at its own cost and expense, pump said oil into said tanks of North Midway Oil Co., or into the receiving station of the Pipe Line Company, either from pipe-line of second party (for use of which second party will make no

charge), or, if second party has no pipe line connections with the pipe line or receiving station of the Pipe Line Company, then from pipe line which may be constructed by North Midway Oil Co. for the use of which the North Midway Oil Company may have arranged, North Midway Oil Company shall have the right to erect storage tanks at any convenient location on said leased premises which will not interfere with operations or structures of second party already erected or commenced. Second party shall furnish to North Midway Oil Company free of charge, storage for one month's royalty due first party after the day the same is payable hereunder.

“North Midway Oil Company shall have the right to sell its royalty oil in connection with the sale by second party of any of its oil, and to that end second party shall advise North Midway Oil Co. of any and all [516] contracts which it has the opportunity to make for the sale of its oil and thereupon North Midway Oil Co. shall have the right to have its oil included in such contract, and if so included, second party shall, on or before the 20th of each month, make settlement for and pay North Midway Oil Co. in cash for all of its royalty oil produced during the preceding calendar month for which payment has been made.

“All wells shall be drilled in a thoroughly workmanlike manner and all water encountered in drilling shall be cased off by second party. Second party shall pay all taxes which may be levied on any and all property of any character placed upon said prem-

ises by it, together with seven-eighths of all taxes that may at any time be levied on the property.

“It is further agreed that if second party fails to commence work on said premises on or before November 25, 1909, or fails to perform at least Two hundred dollars worth of work on said premises before December 25, 1909, or fails to file said affidavits, or shall fail to prosecute the drilling of said first well with diligence to completion or shall fail to drill at least one well for each year of the first ten years of this lease, or to operate on said property constantly and diligently with one string of tools as herein provided, or shall fail to pump producing wells at all times with diligence as long as the same produce oil in quantities sufficient to secure and save, or in case second party shall fail to keep and perform any of its covenants herein contained, then or in either of said events, second party shall forfeit all its rights hereunder and at the option of first party, this lease shall absolutely cease and terminate. Provided, however, that second party shall not be in default for failure to promptly perform the work herein provided during such time as it may be delayed and prevented therefrom by acts of the elements, accidents and other causes entirely beyond its control. Provided further, that in case it shall have drilled and completed one or more wells, but thereafter fails to drill additional wells as herein provided, but otherwise keeps and performs the covenants and agreements herein contained on its part, that said forfeiture shall apply only to the right to drill additional wells, and that during the remainder

of said term, and as long as it shall comply with all other conditions of this lease, it shall have the right to continue pumping wells already drilled, and that the party of the first part agrees not to drill nearer than 300 feet to any well drilled and operated by second party. And second party shall not drill any well or wells more than 150 ft. to line of property held or retained by first party or his assigns after the first well.

“In case at any time the price at which oil can be sold at the wells drops to less than twenty-five cents (25¢) per barrel, the obligation in this lease on the part of second party to pump wells already drilled shall be suspended during such time, but not longer, as the price which can be secured for oil at the wells on said [517] territory remains less than twenty-five cents (25¢) per barrel. This provision shall not, however, in *any*, *affect* the obligation of second party to drill and operate as in this lease provided.

“First party shall have access to the premises and all wells and operations thereon and to the gauge and storage tanks of second party at all times, for the purpose of measuring and gauging the oil and securing general information concerning same. Second party shall keep full, correct and accurate account of all transactions respecting the production and storage of oil and receiving, transporting and sale of oil in all cases where the royalty oil is sold with oil of second party, all of which accounts shall at all times, during office hours, be open to inspection by first party or his representatives. At the terminattion of the right of second party hereunder

either in whole or in part, second party shall have the right to remove from said premises any and all property placed thereon by it excepting that sufficient casing be left in the oil wells to properly and efficiently shut off all water from entering the oil sand, and the balance of casing in all wells shall be sold to party of the first part at his option, for 75% of its market value.

“IT IS FURTHER AGREED, That the time for the commencement of work hereunder, the performance of assessment work, and filing affidavits as herein provided, the constant and diligent operations on said property with the respective equipment as herein provided, and the covenant to pump and otherwise operate wells and work with diligence as herein provided, are, and each thereof is, of the essence of this contract.

“This agreement to bind the successors and assigns of the respective parties hereto without express mention.

“IN WITNESS WHEREOF, on the day and year first above written, first party has hereunto set his hand and seal, and second party has caused its corporate name to be hereunto subscribed and its corporate seal affixed.

JOS. McDONNELL, (Seal)

First Party.

DOMINION OIL COMPANY,

By T. R. FINLEY,

President.”

(Seal) _____,

Secretary.

“State of California,

County of Santa Barbara,—ss.

“On this 12th day of November, in the year A. D. 1910, before me L. J. Morris, a Notary Public in and for said County of Santa Barbara, State of California, personally appeared Jos. McDonnell, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

“IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and the year in this certificate first above written.

L. J. MORRIS,

Notary Public in and for Santa Barbara County,
State of California.” [518]

Mr. PRINGLE.—Now, with that in the record, Mr. Hall, will you stipulate that the Dominion Oil Company became a holder for value of this property, paying over to McDonnell the \$3,000 that had been paid by McDonnell to the Midway Oil Company; also paid for the supplies, rig lumber, and so on, that was on the land, and took the property over for value and in good faith?

Mr. HALL.—We are willing to stipulate that if some officer of the company were called he would swear to that effect. I don't want to stipulate that that is the actual fact, but I will stipulate that if some designated officer of the company, the president or secretary, were called, he would swear to it.

Mr. PRINGLE.—At this time Mr. T. R. Finley, of Santa Maria, was the president of the company,

and you will stipulate that if he were called he would testify to that, and you will also stipulate that Mr. Finley, if he were called as a witness, would testify that he is an attorney practicing in the state of California?

Mr. HALL.—Whatever you state is the fact is all right. I am not familiar with the facts. [519]

The COURT.—That is a lease from McDonnell to the Bankline Company?

Mr. HALL.—To the Dominion Company, the south 40. They afterwards sold the south 40. McDonnell and Maxwell got the south 80 from the British-American or North Midway Oil Company.

The COURT.—Yes.

Mr. HALL.—And then they sold the south 40 to the Dominion Oil Company under this lease of November 20th, 1909.

The COURT.—What was the lease of September? Was that to Dickinson?

Mr. HALL.—That was a lease by the British-American Oil Company of the entire quarter to Dickinson on September 27, and then on September—or some time after that, we know not when, Dickinson assigned that lease to the North Midway Oil Company. Then the North Midway Oil Company made the lease of November 20th to McDonnell and Maxwell covering the south 80.

Mr. PRINGLE.—Covering the south 80, yes.

Mr. HALL.—Then on November 21st, Joseph McDonnell leases the south 40 to the Dominion Oil Company, and some time after that McDonnell and Max-

well, I assume, leased the north 40 of the south 80 to the Bankline Oil Company.

Mr. WEIL.—It really went to a company called the Maxwell Oil Company.

Mr. HALL.—From the Maxwell Oil Company.

Mr. HAMEL.—The upshot of the matter is that there were three operating lessees; that is, the Dominion Oil Company, the Bankline Oil Company, and Barneson & Walker, all claiming under sub-leases from the North Midway Oil Company.

Mr. HALL.—Yes. [520]

The COURT.—And the North Midway Oil Company claims now the lease to Dickinson?

Mr. HALL.—Yes.

Mr. WEIL.—The lease from the British-American.

Mr. PRINGLE.—Just to correct one statement of Mr. Hall's, the lease from the North Midway Oil Company was not to McDonnell and Maxwell. It was to McDonnell.

Mr. HALL.—Yes, that is correct.

Mr. PRINGLE.—And that covers the chain of title.

Mr. HALL.—Yes.

The COURT.—McDonnell and Maxwell are the gentlemen who claim to have made some contract with Butler in September.

Mr. HALL.—Yes; and that apparently eventuated in the contract of November 20th between the North Midway Oil Company and McDonnell.

Mr. HALL.—Mr. Weil, and Mr. Andrews, I be-

lieve the facts are that over that section 30 the British-American Oil Company, as an outcome of that suit of the British-American Oil Company against the Pioneer Midway Oil Company, sold their rights in section 30 to the Pioneer Midway Oil Company for the sum of \$3,500. May the record show that fact?

Mr. WEIL.—The suit was compromised.

Mr. HALL.—The suit was compromised and the British-American Oil Company surrendered its rights in section 30 to the Pioneer upon payment to the former of the sum of \$3,500.

Mr. PRINGLE.—If that is going in as evidence, Mr. Hall, I suppose you will stipulate subject to our objection to the materiality?

Mr. HALL.—Oh, yes. [521]

Mr. L. W. ANDREWS.—I think you are correct, that there was a suit and the suit was ultimately compromised in a quitclaim deed from the British-American to the Pioneer Midway. Now, as to the matter of compensation, consideration, or the like of that, I haven't it in mind.

Mr. HALL.—I think your books show you accepted \$3,500, and if I remember rightly, that was divided up partly to the company and partly to the counsel for the expenses of this litigation.

Mr. A. V. ANDREWS.—I don't know; I wasn't in the case.

Mr. HALL.—No; Judge Toland was, and a man named Smith.

Mr. L. W. ANDREWS.—Aside from the amount of the consideration, we are perfectly agreeable to those facts being known, if they are competent.

Mr. HALL.—The question of consideration, if you are in doubt about that—some substantial and valuable sum.

Mr. L. W. ANDREWS.—Yes. I think, as a matter of fact, that is the case, that the British-American received some substantial amount in compromise settlement of that suit, but as to the competency and materiality in this case, we want our objection.

Mr. HALL.—I haven't anything else except I wanted to offer a part of this Bankline statement, Mr. Weil, or may the record show, if it is agreeable to Mr. Weil, that between August, 1912, and up to March 1st, 1918, there was produced from the 40 acres of land claimed by the Bankline Oil Company, a total of 167,514.96 barrels of oil of the value of \$87,004.52. On the gas, from August, 1912, to March 1st, 1918, I take that, gas of the value of \$1,348.44—and Mr. Weil, I assume that it is a fact that you are willing to stipulate that there are wells producing oil, and have been ever since before the suit was brought and still are? [522]

Mr. WEIL.—Yes. The wells are now producing, all wells together, between 90 and 100 barrels per day.

Mr. HALL.—Yes; and there has been a production there right along since some time before the commencement of this suit; is that correct?

Mr. WEIL.—Yes. At the same time I wrote for this, I wrote for a statement on the Barneson and Walker piece, and they did not enclose it. I have wired for it, and I will have it in the morning, and I will hand it to the reporter, and it may go in the same way.

Mr. HALL.—Yes.

Mr. WEIL.—I would like to have this whole statement go in, if the Court please, and counsel.

Mr. HALL.—Subject to my objection as to its materiality.

Mr. WEIL.—The Bankline paid the Maxwell Oil Company for the unexpired portion of the lease, \$40,600. They have expended on the property in the way of improvements, pumping power plant, pipelines, electric lines, tanks, tools, buildings, warehouses, furniture and fixtures, and oil wells, a total of \$60,111.45. The cost of maintenance and operations, not including administration expenses, employee's compensation insurance, or amount paid on federal income tax, \$57,495.85. I will hand that in, and I will submit a similar statement to-morrow covering the north 80, and with counsel's permission, it may be deemed as being in evidence.

Mr. HALL.—One part of that statement refers to production.

(The statement referred to by Mr. Weil is in the words and figures as follows, to wit:) [523]

“BANKLINE OIL COMPANY.

STATEMENT OF PROPERTY N. $\frac{1}{2}$ OF S. $\frac{1}{2}$
OF NW. $\frac{1}{4}$, SECTION No. 15, T. 31 S., R. 22
E., M. D. B. & M.

MARCH 1, 1918.

AMOUNT PAID MAXWELL OIL COMPANY FOR UNEXPIRED PORTION OF LEASE. . . .	\$40,600.00
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COST OF IMPROVEMENTS:

Pumping Power Plant.....	2,618.08
Pipe Lines	1,843.72
Electric Lines	613.55
Tanks	968.31
Tools	1,742.80
Buildings	1,574.98
Warehouse	342.60
Furniture & Fixtures.....	119.09
Oil Wells	50,288.32

Total cost of Improvements..... 60,111.45

Total Production—August,

1912, to March 1, 1918—

Barrels

Total Cash Value..... 87,004.52

Gas Sales—August, 1912, to

March 1, 1918

Cost of Operation—August,

1912, to March 1, 1918—

Maintenance and Operation. 40,627.69

Royalty

Taxes

Total Cost of Operation.... 57,495.85

DOES NOT INCLUDE ANY PORTION OF

Administration Expenses.

Employees' Compensation Insurance Expense.

Amount Paid on Federal Income Taxes.”

Mr. WEIL.—I have the data. I just got the data on the Barneson and Walker portion of it. The total production from the property since the pur-

chase of the lease by Barneson and Walker, to February 28, 1918, was 87,353.36 barrels. The amount received for the same was \$48,133.19.

Mr. HALL.—And may we at that point have the stipulation that ever since the wells first commenced to produce, which was some time anterior to the commencement of this action, the wells have been producing from that time until the present day?

Mr. WEIL.—Oh, yes. The cost of producing the above number [524] of barrels was \$20,469.75. The total amount of the investment is \$11,722.81, which includes \$7,000 purchase price of the lease.

ROY JONES, recalled.

Testimony of Roy Jones, for Defendants (Recalled).

Direct Examination.

(By Mr. WEIL.)

Q. Mr. Jones, after this little group that was organized into the North Midway Oil Company perfected their plans for the development of this land, who was your representative in the field?

A. The man that was continually in the field was Butler, and the man that went back and forth between our group and the field was Elliott.

The instructions given by our group to them were to press the work. We gave them instructions in reference to this Maxwell-McDonnell situation; the instructions were to help them *all could*, and co-operate, and push them and prod them all the time. We gave them instructions not to stop their own activities. They had instructions to go forward themselves in our behalf, in case Maxwell and McDonnell

(Testimony of Roy Jones.)

failed to go forward with the work. Our little group still retained the north 80 acres, the north half of that section. I think we disposed of it early in December to F. J. Carman.

Mr. WEIL.—That is our case.

Mr. HALL.—That is all of the Government's case.
[525]

Thereupon, by stipulation of counsel for the respective parties, the testimony of BENJAMIN F. LEVET, taken in the suit of United States versus North American Oil Consolidated et al., No. A.—48—In Equity, in the Southern District of California, was by stipulation of counsel, read into the record in this cause on behalf of the defendants, which said testimony is as follows:

Testimony of Benjamin F. Levet, for Defendants.

BENJAMIN F. LEVET, sworn as a witness on behalf of the defendants.

Direct Examination.

(By Mr. WHEELER.)

My name is Benjamin F. Levet. I reside in the city of Los Angeles. At the present time I am assistant engineer of the Santa Fe Railway Company. During the years 1908, 1909 and 1910 I was engineer of the oil and fuel department of the Chanslor-Canfield-Midway Oil Company, and the Petroleum Development Company, which were subsidiary companies of the Santa Fe. They were companies through which the Santa Fe Railway Company secured its oil or a portion of it at least for its trans-

(Testimony of Benjamin F. Levet.)

portation. I was familiar with the water situation so far as the said companies were concerned in the North Midway field in 1908-09-10.

During the year 1909 these companies obtained their water about five miles in a westerly direction from McKittrick. That was in the neighborhood of sixteen or seventeen miles from the town of Taft. The water was obtained by pumping from wells. In the beginning of 1909 we were pumping the water through a three-inch pipe-line and were supplying the water for the leased land—leased by the Chancellor-Canfield-Midway Oil Company. The water was used for domestic and drilling purposes. A six-inch pipe-line was started on December 26, 1908, and completed about the middle of 1909. We laid over forty miles of this six-inch pipe-line. It went to the original wells, west of McKittrick. We began pumping [526] from that line about the time we had the pipe-line constructed as far as Section 8, in Township 32-23. It was constructed before the 1st of June, 1909. It was in the early part of the year. After it was completed, we did not succeed in filling this six-inch pipe-line from our wells. We discovered that the well that we had depended upon that seemed to be furnishing, at the time it was completed, considerable water, was not going to be able to furnish the water, but we were really pumping the water down. At that time, I presume we succeeded in getting through the six-inch pipe-line about the same amount of water as we did through the three-inch pipe-line. We were engaged in drilling other

(Testimony of Benjamin F. Levet.)

wells in another location to remedy the deficiency. They were in the neighborhood of half a mile away, upon the same water properties of the Santa Fe. It was in April, 1909, we started on the first well at the lower or new plant. It was completed in May, 1909. When we completed that first well we drilled other wells in the same year. These wells were started and drilled as follows:

Well No. 6 started May 6, 1909; completed May 22, 1909.

Well No. 7 started June 17, 1909; completed July 27, 1909.

Well No. 8 started May 22, 1909; completed July 23, 1909.

Well No. 9 started August 9, 1909; completed August 20, 1909.

Well No. 10 started August 27, 1909; completed September 10, 1909.

Well No. 11 started September 16, 1909; completed September 28, 1909.

Well No. 12 started October 5, 1909; completed October 14, 1909.

Well No. 13 started May 23, 1909; completed June 28, 1911.

We were over a year in completing well No. 13 but that does not indicate that we were drilling it continuously. We went back afterwards for the purpose of indications and drilled it similar in depth to the balance of the wells so that we could see how the water stood,—the level of it. As we developed the water in these wells which I have enumerated we

(Testimony of Benjamin F. Levet.)

placed them on a pump to send the water along. In well No. 5, this had been dug by [527] hand, 6x8, to a depth of 22 feet, and a pump placed in the bottom thereof and we raised the water in that method. In well No. 6 in the same manner. Later on, when well No. 8 was completed, we secured a large lift pump, a Lutweiler pump, capable of lifting water from considerable depths and in desired quantities. Up until the time we secured the Lutweiler pump our water supply was not materially increased so far as our six-inch pipe-line was concerned. The Lutweiler pump was placed in operation on August 18, 1909.

At the time we obtained this Lutweiler pump the necessities of our own company had increased above what they were at the beginning of the year 1909 and we had demand for more water. Between the first day of January, 1909, and the time we got in this Lutweiler pump in August, 1909, our companies were doing very little drill work. After we got in the Lutweiler pump we began to increase our drilling work immediately. The absence of water had occasioned the delay in this increased amount of drilling by our companies. Between the first day of January, 1909, and the first day of October, 1909, our company did not have any extra or surplus water to sell to any new concerns for drilling purposes. Between the month of June and the month of October, 1909, there was but very little water procured from our company by any other company and that water was for domestic purposes.

(Testimony of Benjamin F. Levet.)

During that period of time there was always a demand for water. We had a good many applications but we needed the water ourselves. Our property was shut down. Our men had been fired and business was at a standstill. During that period of time it was generally known in that community that our company was increasing the size of its pipe-line and sinking more wells with a view to getting more water and installing heavier machinery. During that period of time we encouraged those applicants who came to us to [528] believe that they would be able as soon as our improvements or enlargements had been completed, to get water. When the first Lutweiler pump was installed we had other troubles besides having the pump installed, with water for the pump and the six-inch main. We had trouble with our pumping facilities and boiler facilities, and these were not placed and not in good position so that we considered we were in good shape to do business until the middle part, 1910.

At the time of the writing of the letter to Mr. Strassburger December 9, 1909, we were doing everything in our power to increase the water supplies. I recall that at that particular time, along in December, 1909, work was progressing with a view to the increase of the water supply which ultimately was consummated in the middle of 1910 by a larger supply of water. In completing its plan for bringing in that water supply, the company spent in the neighborhood of \$150,000. My first estimate for the bare pipe-line, additional pump and boiler facilities, was

(Testimony of Benjamin F. Levet.)

in the neighborhood of \$115,000; but we afterwards added the expense of the lower plants, digging these various wells that I have enumerated, which ran into money, and later equipping them with pumps. After the water supply had been materially increased, in the middle of the year 1910, it was never equal to the demand. At that time our company was drilling in the neighborhood of twenty-five to twenty-eight wells—strings of tools—going at one time. At that time our demands in that field must have been greater than the Standard Oil Company's. We looked to that field, at least in considerable part, for our fuel supply for the Santa Fe Railroad. Because of the shortage of water our own wells were practically shut down in the middle of 1908 and it was after September, 1910—I mean the middle of 1910—before we got in shape so that we could do much business. [529]

Prior to shutting down we always had trouble to furnish water for rotaries. They demanded enormous quantities of water. I made one investigation in which I discovered that one well had used, in 12 hours, 800 barrels of water.

Cross-examination.

(By Mr. HALL.)

That was an oil well on Section 4 in Township 32-23. It is six or eight miles from the Section 2 in controversy. I don't know how much water it took in the rotaries that were used in that well on this land in controversy. It is impossible to predict how much water a rotary usually requires in a

(Testimony of Benjamin F. Levet.)

day. I have given you the instance of one well requiring 800 barrels in twelve hours. That would be an extreme maximum. You cannot predict the amount of water that will be used by a rotary. This water is lost in these holes. It percolates through. There is a circulating system, and it is being fed constantly into the well, and the supposition is, when it is explained, that the water simply goes into the well and circulates and comes out again and gets new mud and goes back in and mudds up the wall and is used over and over and over. That is all right in theory, but when you come to put this water down in a hold one thousand or two thousand or three thousand feet deep there are places where this water seeps through, and there are places where there are bottoms that you absolutely cannot fill. You might run a thousand barrels in a well every day and not be able to fill it. But I am not able to tell you how many barrels, on an average, it would require to run a rotary rig.

I am not an oil man and I cannot give you an estimate of that. I am a water man engaged in furnishing water to wells but I don't know how much it requires on an average to furnish a rotary rig. My opinion in that regard would not be of much value to you. I have had experience in furnishing water for rotary rigs. The [530] water has been furnished to them and my only necessity for investigation has been where there were some complaints and it was necessary for me to determine where the water was going.

(Testimony of Benjamin F. Levet.)

This Lutweiler pump system was installed on August 18, 1909. In February, 1911, there was an additional Lutweiler pump installed in well No. 10. Well No. 10 had never been put on the pump prior to that time. There was water there all the time. Well No. 10 was finished September 10, 1909. There was never any time after the completion of well No. 12 on October 14, 1909, when we did not have a sufficient supply of water in our wells.

The only trouble was the lack of pumping capacity. We started this Lutweiler pump on August 18, 1909. At that time we were not using both the six-inch and three-inch line, completely filled with water. The use of the three-inch line was abandoned as a main pumping proposition after we had constructed the pipe as far as Section 8. We used that three-inch line as a distributing line after the six-inch line was constructed. It was filled with water as soon as it was necessary to use it for distributing purposes. We never tore the three-inch pipe-line up. We kept it filled with water, if we had occasion to use it as a distributing pipe-line. It got its water from the storage tanks that the new pipe-line delivered water into. We did not take it out of the six-inch line to distribute. I couldn't tell you how many acres of land the Santa Fe was operating in 1909. There was quite a large body of land. They were figuring ahead on a good many wells. I don't know as there was any stated number of wells. I couldn't say that during that year they were running as high as twenty-five or thirty strings of tools at one time. There

(Testimony of Benjamin F. Levet.)

were a great many strings of tools running in 1909 but I couldn't tell you how many. There were times when none was running and other times—probably three or four or [531] five. When they were stopped it was solely due to the lack of a supply of water. I wouldn't say there was no other reason why a well was shut down other than water troubles, because other troubles can happen to an oil well. Our water production started to increase towards the latter part of the year 1909. I don't know how many wells we commenced to supply with water immediately after October, 1909, but our water supply began to increase after October, 1909. Before that practically they were idle and shut down, and from that time on well after well until we got as high as say twenty-five or twenty-eight wells. The primary object of that water well and water system was to drill the Santa Fe's land. We were instructed not to let out any water to anybody else as we needed it, we were to conserve the water for our own use, and not let anybody else have any as long as we needed it. We needed that water prior to October, 1909, for our own drilling. We didn't have enough for ourselves.

Q. Why was it that you let the Hawaiian Company have water in January, 1908, to drill the northwest quarter of 31, in 31-23?

A. Well, it may be at that time that their meter was connected on and had not been disconnected—an oversight.

Q. You also let them have, in January, 1909, water

(Testimony of Benjamin F. Levet.)

to drill a well on the northeast of 31, 31-23, did you not? A. I couldn't say that we did.

Q. Have you any books to show?

A. I have nothing here to verify that; no, sir.

Q. You let the Amber Company drill a well on the northwest of 36, in 21-22, in October, 1909, did you not?

A. (Referring to papers.) I will state that in the month of October, 1909, the Santa Fe disposed of water to outside parties to the amount of 778 barrels.

Q. Who were they? [532]

A. I couldn't tell you that.

Q. Did you know of the Dominion being furnished with water in 1909 to drill a well on the northwest quarter of Section 15 in 31-22?

A. As I said before I have got nothing here to verify that.

Q. Well, what is your independent recollection? Have you any recollection about that?

A. The only recollection I have was some information that I gathered from my records which show that in June, 1909, the company disposed of water amounting to 27 barrels a day to all outside parties for drilling, domestic or any other purposes they wanted to use that water for.

Q. I didn't ask you about June, but about November, 1909, and the furnishing of water to the Dominion on the northwest quarter of 15 in 31-22.

A. Well, I thought I could give you my information in regard to what I absolutely know about June and October—

(Testimony of Benjamin F. Levet.)

Q. Well, I am asking you particularly now—I will get to that other a little bit later—

A. Well, I will have to answer in the same way, that I have no data here to show that.

Q. You have no independent recollection of it?

A. I do not, excepting that at that time we were not disposing of water for drilling purposes.

Q. Well, you said that you didn't furnish it to the Dominion Oil Company in November, 1909,—water to drill a well on the northwest quarter of Section 15, in 31-22?

A. They might have got a little water for drilling purposes, but it wasn't intended that they should.

Q. Do you know the Fox Company that drilled a well on the southeast quarter of Section 15, 31-22, commencing on November 26, 1909? [533]

A. The same would apply to them.

Q. You don't know whether they got that or not. Have you, or can you get me a statement of the water that was sold or otherwise disposed of by this Santa Fe water line during the year 1909?

A. I have the data right here before me from June, 1909, to December.

Q. All right; give it to us.

A. These figures represent the total amount of water that was disposed of to outside parties for any purpose, naturally, that they would wish to use it for.

Q. Just preliminarily, from what source do you get those figures?

A. From my own data out in the oil fields. I had it procured in advance.

(Testimony of Benjamin F. Levet.)

Q. And those figures were taken of actual deliveries? A. Yes.

Q. And not what charges were made, or anything of that sort?

A. Of meter readings that were under my charge during that time.

Q. Go ahead and read it.

A. June, 27 barrels a day; July, 47 barrels a day; August, 39 barrels a day; September, 102 barrels a day; October, 778 barrels a day; November, 1,210 barrels a day; December, 2,906 barrels a day.

Q. That was what went to outside parties?

A. That was what went to outside parties, yes, sir.

Q. You were in the business at that time and you were the person to whom one should make application in order to secure water, were you not?

A. Yes, sir.

Q. Did you say that Mr. Strassburger applied to you for water to be used on this Section 2? [534]

A. He did not.

Q. He never at any time made any application to you as superintendent of the Santa Fe water line to get water to drill with on Section 2, the section in suit? A. No, sir.

Q. And you never declined to furnish him any water for that purpose?

A. Not for Section 2; no, sir.

Q. Did Mr. Laymance or Mr. Tryon or anyone connected with the Section Two Syndicate make any application to you as superintendent of the Santa Fe

(Testimony of Benjamin F. Levet.)

water line for water after March 1, 1910, for use on Section 2?

A. I don't think that anyone ever made any application for water for Section 2.

Q. Did the amount of water that you were allowing outside parties to have continue about the same after December, 1909? A. No, sir.

Q. How long did you continue to furnish outside parties with water?

A. Well, I didn't quite understand your other question, and I will answer that first.

Q. Well, I mean how long did you continue to furnish about the same amount of water to outside parties after December, 1909?

A. After December, 1909, we began to furnish more water to those that were taking water, that had contracts covering water, and also additional parties that had applications in for water before, that we were not able to supply with water, and of course, instead of furnishing that amount of water we furnished double that amount of water. At the time these improvements came on, as I say, about the middle of June, 1910, then we began to furnish water in pretty good shape. [535]

Q. But in December, 1909, you were furnishing 2,900 barrels a day to outsiders?

A. That is, to our customers at that time, yes. And that was supposed to be for domestic purposes.

Q. And from that time on it increased up until the middle of 1910, when you furnished everybody all they wanted?

(Testimony of Benjamin F. Levet.)

A. No, we never furnished everybody all they wanted.

Q. Well, you furnished a very large amount, then?

A. We furnished, practically, two of the companies that we had under contract the water they needed, but we had very large demands for water that we could not supply. We were never able to supply the demands of the field.

Q. Don't you know that some of this water that you furnished to outside people was used for drilling purposes? A. It was not supposed to be.

Q. Well, don't you know that it actually was?

A. Well, it is immaterial to me how I answer that, in furnishing 2,900 barrels a day. With twenty companies, or the companies you enumerated, they are not going to do much business.

Q. It is real material to me that you tell us what the facts are.

A. Well, the facts are that they were connected up with meters with instructions that we were short of water and that it was not to be used for that purpose, and if they have drilled with our water I can't recall it.

Q. You can't recall in a single instance when you were furnishing 2,900 barrels a day in December whether they were using it for drilling purposes?

A. No, sir.

Q. Don't you know that the Fox Company actually had a contract [536] and they commenced spudding that well on the southeast quarter of 15 in 31-22 on November 26, 1909, with water that they

(Testimony of Benjamin F. Levet.)

got out of the Santa Fe Company?

A. I have nothing to verify that in my mind.

Q. Well, independent of any verification, don't you remember, of your own knowledge, that such was the fact? A. I do not.

Q. You were not at that well at any time after it was being drilled?

A. Oh, I might have been near there or have passed there, or something of that kind, but I didn't look to see particularly whether they were using our water or how much they were using or where it was being used.

Q. You simply say you don't know?

A. I simply say we were short of water and these people were instructed that the water was to be used for domestic purposes only. It was impossible to cut the meters off for the reason that they had to have water for domestic purposes, and if some of them used the water for drilling purposes we had no method of knowing it.

Q. Have you any books in the possession of yourself or your company which will show the exact companies to whom you delivered water and the amounts from October, 1909, on until the 1st of March, 1910?

A. I think they can be verified in the field.

Q. Will you please make an examination and produce those books here to show those?

A. It would take some time to do that.

Q. I know it, but I think we are entitled to that data. You knew you were coming here to testify on this subject, did you not? A. Yes, sir. [537]

(Testimony of Benjamin F. Levet.)

Q. And you knew that you were expected to testify as to the amount of water that was supplied by the Santa Fe Water Company during this time?

A. But I didn't know that I was to specify just how much water each party used during the time.

Q. You thought you were to deal in generalities only? A. Yes, sir.

Mr. HALL.—I would like to have that statement in the record, your Honor.

The COURT.—Well, the books are not here. Are those books here?

A. No, sir; they are out in the oil fields of Kern County at Bakersfield.

Q. (By Mr. HALL.) How long will it take you to get them?

A. Well, it will probably take a couple of days.

The COURT.—I suppose you could have a statement made and sent up here—a statement from your books. You can send it up here to the clerk.

The WITNESS.—Yes.

Mr. HALL.—Will you have that statement made up and send it up to the clerk of the court?

The WITNESS.—I will wire for that statement.

Mr. WHEELER.—We have no objection to this testimony going in, as far as we are concerned personally, but it seems to me that when a man comes here for the accommodation of both the Government and ourselves for the purpose of testifying as to water conditions in the field, it is perfectly immaterial as to how much water each individual company got. When it appears how much water this

(Testimony of Benjamin F. Levet.)

company was delivering, it seems to me that is sufficient, and the details of what the Fox Water Company or some other water company got is quite immaterial, and it is obviously only for the purpose of [538] furnishing the Government information for use in other litigation, and for that reason I object to the evidence as incompetent, irrelevant and immaterial, for the reasons stated, and I will ask your Honor not to order this witness to bring this data into court.

Mr. HALL.—I simply want to show, your Honor, that the quantities of water furnished some of these oil people, among them the Fox Oil Company and some of these other companies I have mentioned, will show that it could not possibly have been used for domestic purposes out there in the oil field, and that it must have been used for drilling purposes.

The COURT.—I am at a loss to understand what bearing it has on the particular case involved anyway. If the Santa Fe Company were furnishing all the water they had they were not in position to furnish water for Section 2, and that is the question in this case, as to whether Section 2 Syndicate could get water, if it is material at all, for drilling. So, I do not see how it makes so much difference.

Mr. HALL.—We would like to have it in the record to show that they were furnishing water to other oil companies, and that those people were drilling.

Mr. WEIL.—They had a perfect right to do that. But they were not obliged to furnish it to Section 2.

(Testimony of Benjamin F. Levet.)

Mr. HALL.—But they have not shown that they applied to these people.

The COURT.—Well, that is another question entirely; but the testimony of this witness is that the Santa Fe were using all the water they had. Either they or their customers were using it. And I don't think it makes any difference to whom they supplied it.

Mr. HALL.—This witness wants to leave the impression, apparently, that it was used solely for domestic purposes, and I do not [539] think the record will bear him out on that statement.

The WITNESS.—I have also admitted that this water ran through a meter, and we had no method of knowing what that water was being used for. But those people were notified not to use this water.

Q. (By Mr. HALL.) And you don't want to leave the impression that it was used for domestic purposes and not for drilling purposes?

A. I can't state that, because I don't know.

The WITNESS.—Shall I send that statement, your Honor?

The COURT.—No. That is not necessary. I do not think it is material.

Mr. HALL.—Well, with that statement now I don't know that it is, your Honor.

Redirect Examination.

(By Mr. WHEELER.)

I have no recollection of Mr. Strassburger or anyone speaking to me about water for Section 2 in particular. I remember a talk with Mr. Strass-

(Testimony of Benjamin F. Levet.)

burger with regard to his desire to get water from the company; he made application for water for other territory, over on the other side. That was some time in 1909. At the time he made that application we were not in position to supply him with water and we refused him at that time. We told him as soon as we could furnish it we could be glad to give it to him. I explained to him at that time as I did to other applicants that we were increasing our facilities and that we did hope to have a water supply. It was generally known throughout the field that the Santa Fe was spending money there to improve the water conditions. It was a matter of concern to the corporation and its future business to build up that particular territory and I took particular delight in building up the water proposition because it had been predicted that we did not have the water; in fact, the [540] Bakersfield paper came out and stated that the Santa Fe had twenty miles of six inch pipe-line and didn't have water enough to wet it and I was anxious to get it full once, anyway. That statement was made in the Bakersfield paper at the time that the pipe-line was completed, about the middle of 1909. When the pipe-line was completed I used every effort I could to increase the water supply and thus refute the statement which I considered reflected upon me as an engineer but the Bakersfield paper didn't come out and tell about it.

(Testimony of Benjamin F. Levet.)

Recross-examination.

(By Mr. HALL.)

We had demonstrated when we placed the first Lutweiler pump, which was a 15-inch stroke, six-inch barrel, that we had all the water in that well that that pump would handle; and we later increased that pump in size, that is, the size of the barrel, to an eight-inch, and later we put on an eight-inch pump with a ten-inch barrel. It was put in in the first part of 1910. That pump was shipped from Los Angeles, December 30, 1909, and was placed immediately thereafter. The pumping capacity of the plant was increased when we got the boilers in shape to handle the water at the upper plant to force the water along.

I might make a little explanation and say that our pumping plant was in two stages—one you might term as temporary and the other as permanent. In speaking of these wells at the lower plant it was necessary to have boilers to dig them. They were drilled. And those boilers were second-hand boilers sent over from the field and were very unsatisfactory at the end and when we were ready to do business and had larger pumps there. And also at the upper plant where we lifted this water over a distance of seven miles and an elevation of about one hundred feet it was necessary for us to have other pumps to handle that amount of water, as we had other and [541] smaller pumps to handle it through the three-inch line and it became necessary to have larger pumps to handle it through the six-

(Testimony of Benjamin F. Levet.)

inch lines; and then in order to have a factor of safety so that in case when the pump broke down we had another pump to go on, and it was necessary to have a second large pump, and ultimately we had the two large pumps and three 100 horse-power boilers at the upper plant to send this water along. We attained that stage of development when the last boiler was installed at the well—that is, the third boiler—October 13, 1910; but there were two boilers installed before that which practically were handling the business satisfactorily. When that stage of attainment was reached, in the middle of 1910, we were in position to furnish water in the field. Then we were in shape to fill our pipe-line, go ahead with our own operations and at the same time expand and distribute water to outsiders. That was along in July or August, 1910. We were not then supplying water to all people applying for it; we never did that. You must understand that when that field first started all of the development was up in the hills and the wells were very shallow and it didn't require much water, and there were very few companies operating there on the start; but finally, as someone developed a well in the lower ground, it caused a stampede. Everyone struck out for the lower ground, and the territory was all taken up after that time, and the wells under the lower ground were deeper and required more water, and of course the companies going in there to develop, there was a scramble for water. I am acquainted with the Western Water Company. As nearly as I can re-

(Testimony of Benjamin F. Levet.)

member, it got its water line into that field about the beginning of 1912. I couldn't say exactly when but it was about that time. When the line was completed they must have had considerable water. I never knew exactly how much, but it must have been considerable, because [542] they were able to accommodate a good many companies.

Redirect Examination.

(By Mr. WHEELER.)

When people came to me for water I told a good many of them that they would better see the Western Water Company or they had better see the Stratton Water Company. That was even after we had made these large installations. As late as September, 1909, we were selling an average of 39 barrels a day for domestic purposes. At that time people were instructed that we were short of water, and the water was not to be used for drilling purposes; and as you can readily see, 29 barrels, or 100 or 1,000 barrels a day distributed between the companies that were connected with our lines at that time wouldn't go much further than supplying them with water for their cook-houses, their men and their stock, and some were even using water for gardens and lawns. Stock in that country requires a great deal of water, the same as they do on other locations. There was considerable stock in there at that time. There was a scramble and everybody had to be hauled in by team. The roads were heavy and the material that was hauled was heavy, and it required large teams. The weather in the summer months

(Testimony of Benjamin F. Levet.)

was characteristic of the central states here. Even the month of Septemer is very warm down there. There was considerable increase in population and increase in demands along in the year 1909. People were scrambling for water for domestic purposes the same as for drilling purposes.

I explain the increase in the use of water in October, November, 1912, simply by the fact that we were getting in shape to provide more water. I have no means of knowing how much, if any, of that water, went into the drilling of oil wells, because as I stated before, they were connected up with meters and we simply instructed them not to use the water for drilling purposes. If they [543] did we had no means of knowing it unless, of course, we should happen to come across a condition and notice it, and I don't know of any particular case where we did. If that were done it was done surreptitiously and without my personal approbation. Second-hand boilers were used in drilling those wells for the reason that we could not procure other boilers in that field. There was a scarcity of material. There was such a demand for drilling material for wells and for rigs and for boiler uses that the railway companies couldn't get it in there. There were times that there were cars delayed along the railroad for weeks at a time, car after car, and they couldn't get it in there. There were times that there were cars delayed along the railroad for weeks at a time, car after car, and they couldn't get them through, and they didn't have the material in the field, and they

(Testimony of Benjamin F. Levet.)

had to wait for it, and there was considerable delay on that account.

Notwithstanding the relation of my companies with the Santa Fe Railroad Company we ourselves suffered difficulties in the way of delivery of freight and we even had to ship second-hand boilers from Melinda, Orange County and from the Kern River field. The scarcity of boilers in the market was due to the fact that they were not on the coast. The manufacturers woke up to the fact that there was more demand than they had the material on hand to supply.

Q. The reference you made there to the purchasing of a pump in the latter part of December,—in the routine of your business it takes some time to actually get your company to the point of giving an order, does it not, even after locally you have determined that a thing ought to be done?

A. As a rule, with large corporations, particularly railway companies, there is so much red tape that at times it takes a long time to get anything through. [544]

Mr. Perris was manager at that time of our oil properties.

Q. The reason I ask that question again is this: Mr. Perris, in a letter to Mr. Strassburger which is here in evidence, dated December 9, speaks about the possibility or probability of the company being able to supply him with water, and mentions that some pumps are being installed. Do you know what

(Testimony of Benjamin F. Levet.)

pump or pumps such a reference on December 9 would have relation to?

A. They would probably refer to the Lutweiler pumps at the water wells and also the large force pumps for sending the water along.

It was expected in December, 1909, that in due course we would have an increased supply of water. In fact, one of those pumps I have mentioned was ordered at that time. It was my desire at that time to accommodate Mr. Strassburger if I could and as soon as I could. I mean our company had that intention.

I slurred the Santa Fe a few moments ago but want to square myself in regard to these items of pipelines and water propositions, they granted authority almost on sight for all these improvements and instructed us to rush it along—to whoop it up. They got the land, and they got oil, and we must get it out. The improvements we contemplated by the latter part of December were the improvements referred to in the letter of December 9th to Mr. Strassburger.

Recross-examination.

(By Mr. HALL.)

Q. The Santa Fe railroad, with this so-called red tape, didn't hinder you any about getting orders through, did it? Is it not a fact that along in 1909 when they wanted this land developed they gave you instructions to order direct, yourself, and that you did not have to go through the Purchasing Department of [545] the Santa Fe railroad in order to get your material and equipment?

(Testimony of Benjamin F. Levet.)

A. I ordered no material and equipment other than that which would be necessary for men laboring in the field. I hired my own men and any equipment necessary for their convenience was at my command. But the pumps and pipes and things of that kind were handled through regular requisitions through our store department, through our manager.

Q. The Chanslor-Canfield Midway Oil Company's superintendent did that; it didn't go through the railway system's office?

A. It went through the manager's office.

Q. The manager of the Chanslor-Canfield Midway Oil Company? A. Yes.

This delay in getting boilers was not due to congestion on the railroad primarily; secondarily it was. So many of these things came along at one time that—I will cite as an instance that one time there was at least twenty cars sidetracked down below Maricopa and there was material there that was held up for a week or two or three weeks and that people ought to have had. These second-hand boilers that we shipped in from Los Angeles and the Kern River field had to come in over this same Sunset Railroad just as new stuff would.

By the COURT.—How many sources of supply of water were there in that field during 1909?

A. Well, there was the Stratton Water Company, which took out a sulphur water in Section 8, 32-23; and there were other small companies that developed small quantities of water from some wells that they

(Testimony of Benjamin F. Levett.)

had drilled for oil purposes and discovered there was water there; and our own.

Q. I mean people that were selling water. I don't mean those who developed it for their own use.
[546]

A. Well, as I say, there was the Stratton Water Company, our own company; and one or two other companies that took out water from wells they had drilled for oil and they sold some of the water—disposed of it. I couldn't cite you the names of the companies now.

Q. Was there any water brought in by rail during that time? A. Yes, sir.

Q. Shipped in from Bakersfield.

A. Yes, sir, there were trainloads of water came out to the field.

Q. Who was the manager of that water company?

A. I don't recall now who the manager was. It was handled independent of the railway company.

Q. The three principal sources of supply, then, were your company, the Stratton Water Company, and the water shipped in by rail?

A. Yes, sir; that is, the large supplies, and the smaller supplies, as I have stated, was where people furnished water from their own wells; but that was very small.

Recross-examination.

(By Mr. HALL.)

I don't know of Captain Matson's company coming in the field. I don't remember of anyone pumping water from Buena Vista Lake in 1909 except the

(Testimony of Benjamin F. Levet.)

Western Water Company. There was some company that had a pumping plant alongside of the railroad at Taft and had a tank up on a hill—well, up on what we call Twenty-five Hill; I don't know what section it is,—25 or 26; and they used to pump water that they got from the railroad company up in that tank and distribute it to customers. I don't know the name of that company, unless that is the one you refer to. [547]

Redirect Examination.

(By Mr. WHEELER.)

I do not believe that either the Southern Pacific Company or the Santa Fe Company had anything to do with that company. I couldn't say that that association went by the name of the railroad company. I don't know what the name was. It was the only concern of that kind that I knew of.

Thereupon by stipulation of counsel for the respective parties, the testimony of F. M. WORTHINGTON, taken in the suit of United States vs. North American Oil Consolidated et al., No. A.-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the defendants, which said testimony is as follows:

Testimony of F. M. Worthington, for Defendants.

F. M. WORTHINGTON, a witness called on behalf of defendants, having been first duly sworn, testified as follows:

(Testimony of F. M. Worthington.)

Direct Examination.

(By Mr. WHEELER.)

My name is F. M. Worthington. I am a railroad man by occupation. My headquarters are Bakersfield, California. I hold the official position of Division Superintendent of the Southern Pacific Company. During the year 1909 I was Division Superintendent. I have knowledge of the car situation with reference to cars for the carriage of oil and water from Bakersfield or any point near there to the Midway oil fields. They were all handled from my office. I know that they organized a water company called the Kern Midway in January, 1909, I think it was. I couldn't tell the exact date. Prior to the organization of that corporation the railway company had been supplying a demand for some water in cars to the Midway Oil Fields and there was no water to be had other than the supply that the railroad had that they could load in [548] cars. With the same facilities that we took water in our engines, we could load the oil cars, and I furnished a limited amount to some of the companies that were developing out in that field prior to the time that this Kern Midway Company was formed. I was furnishing water from the company's supply, and the water was limited. I could only furnish, I think, not over five cars and oftentimes less. The companies out there would call me on the phone, and some of them even wrote to me from San Francisco here. Some would direct them to—they would say the superintendent down there would fix you out with water, and

(Testimony of F. M. Worthington.)

some of them wrote me letters; and when the Kern Midway Water Company was formed I referred them to Mr. Young for their water, and I furnished cars. From the time that arrangement began, from January, 1909, the demand for water from the Kern Water Company was very much in excess of the cars that I was able to furnish. After the organization of the Kern-Midway Water Company people other than the representatives of the Kern Midway Water Company talked to me and came to see me with regard to furnishing cars for water. It was a frequent occurrence for developers in the field, the various oil companies,—the superintendent or the manager out there would call me on the phone, even during the midnight hours, and tell me that he had been talking to Mr. Young on the phone and he said he had plenty of water but he couldn't get any cars, and they all threatened me that they had a hole in progress of development and that their casing would freeze if they didn't get the water and the company would pay for it, and I furnished all the cars I could. I did the best I could to that end. I worked our car repairers over time up until late in the evening, nine and ten o'clock on the rip-tracks to repair two or three of my bad-order cars that they could make repairs on and get them off the rip-tracks with the switch engine [549] by nine or ten o'clock and place them where they would have a load to go out on that train that left at 2 o'clock in the morning. That is when the water train left.

I think I had complaints in writing of a shortage

(Testimony of F. M. Worthington.)

in cars as early as the 12th day of January, 1909. The letter which you have just handed me is a letter that was written to me and received by me in the regular course of business, to wit:

Mr. WHEELER.—We offer the letter in evidence as follows:

“Stockton, Cal., Jan. 12, 1909.

Mr. F. M. Worthington,
Supt. of S. P.,
Bakersfield, Cal.

Dear Sir:

In the latter part of July, 1908, the writer called at your office in San Francisco in reference to securing a water supply for the Gate City Oil Co.'s property in the Sunset Dist. for the use of drilling and boiler purposes. We were informed by your company that you would supply us with Bakersfield water for this purpose by a letter written by your Mr. Worthington at Bakersfield per request by wire from your Mr. Ingram's office. An order was placed by this company with your Bakersfield office for it, and we were to receive one large car of water a day. For a time the water was received without any interruption. For the last week, however, we have been unable to secure this water through some cause or other, and as a consequence have been short of a supply. We would be pleased to have you call your agent's attention at Bakersfield to this matter so that we may be able to receive the water in the future.

Very truly yours,

GATE CITY OIL CO.,

Per (Sgd.) IRA E. SMITH.”

(Testimony of F. M. Worthington.)

This Sunset district was on this same line. After the first day of January, 1909, I couldn't assure anybody that we would furnish them any specified amount of water for delivery in the Midway District. Subsequently to that time and notwithstanding the organization of the Kern Midway Water Company a good many of the applications came directly to me in the first instance for water. After the Kern Midway Water Company was formed I referred [550] these applications to Mr. Young, who was handling the Kern Midway Water Company. If these applicants would write me a letter I would occasionally write them a letter and tell them I couldn't furnish them with water. The letter which you have handed me is a letter I wrote to Mr. Burns on February 16, 1909. That fairly expresses the responses that I was giving to the applicants who spoke to me in reference to the water. I wrote a letter similar to that to everybody that wrote me for water. I didn't give them any guarantee of any particular amount.

Mr. WHEELER.—We offer the letter in evidence.

“Bakersfield, Feb. 16, 1909.

Mr. T. J. Burns,

Supt., Brookshire Oil Co.,

Orcutt, Calif.

Dear Sir:

Replying to your letter of Jan. 30th, to Asst. Gen'l Manager W. R. Scott, which has been referred to me, with reference to this company furnishing you water at Siding No. 4 in the Midway field.

We could make you no definite promises along

(Testimony of F. M. Worthington.)

this line. We have as a matter of accommodation to the producers in that field, been letting them have any surplus water that we could spare from our supply at Bakersfield at what it costs us to handle same plus the regular freight charges. We will be glad to furnish you with any water we can spare but could not agree to keep you supplies, you would simply have to take your chances along with the other consumers.

Yours truly,

Supt.

CC. to H. V. P.”

That is a carbon copy of the original. My signature was there above the word “Superintendent.” It was signed “F. M. Worthington, Superintendent.” There never was a time when I could have assured either the Kern Midway Water Company or any intending customer of that company or any person desiring to have water hauled in cars that I could furnish any given number of cars at any given time at any time after the 7th day of January, 1909. There never [551] was a time when I could furnish them a day ahead. They ordered the cars during the morning, through the day and up until ten or eleven o’clock. I wouldn’t know myself how many cars I could let them have more than twenty-four hours in advance. The orders were filled from empty cars that were returning from the oil fields. They were all brought into Bakersfield and inspected there by our car inspectors and put in the trains there that went out into the Kern River and the McKittrick

(Testimony of F. M. Worthington.)

and Sunset oil fields. All those cars were brought right into Bakersfield and distributed from my office.

Cross-examination.

(By Mr. HALL.)

Q. Haven't you some records in your office showing the number of cars that were loaded with water at Kern Junction or Bakersfield to go out along the Sunset Midway for the North Midway field?

A. Well, the agent might have biling instructions, that is all. I don't think I have any in my office.

Q. Don't you keep what is known among railroad men as a wheel report?

A. The yard office has a car report, in the yard office.

Q. And that would indicate, would it not, the number of cars that went out each day loaded with water from Bakersfield or Kern Junction out to the North Midway field?

A. Well, it would give the number of cars that went out there. I don't know whether it would specify that they were loaded with water or empties. There were no empty oil cars went out there, without it was a particular car for gasoline, or something like that,—a foreign car, you know, that comes from some of these—

Q. But all of your tank-cars that went out there were always filled with water unless there was some exception like a car going [552] to get gasoline that would be injured by hauling water in it?

A. Always. We never hauled an empty out into the Sunset field where we were delivering the water.

(Testimony of F. M. Worthington.)

Q. And it is also true, is it not, that lots of times you sent out cars that came back empty and were re-filled with water and sent out again without hauling out a load of oil?

A. I don't think there was a water car brought back into Bakersfield—there did some return at Gosford Junction about nine miles from Bakersfield, and they were hauled out to McKittrick and brought back with oil.

Q. But were there any brought back empty into Bakersfield, where they might be again loaded with water and again returned into the field without loading with oil?

A. There might possibly have been a car that the valve was leaking or was in bad order that would have come in and go to our inspectors and the car repairers would work on it, or something like that; but other than that there was nothing.

I cannot tell you how many domestic water cars we had on that line in 1909. We had nine locomotives working out in that field switching and handling the business, and each one of those locomotives had two water-cars. It took two water-cars to do it for twenty-four hours. There was no water out in that field, and they hauled their water from Millux. That is our water supply. We would bring down five or six of those locomotives and they would fill their water-cars and take them to Maricopa and Taft and in that country. Those were 6,500 gallon cars—what I call a small oil-car. They were oil-cars that were washed and cleaned out and used for that purpose.

(Testimony of F. M. Worthington.)

There were one or two wooden cars in there, or tank-cars; I don't know just what the capacity of those was.

Prior to the time the Kern Midway Water Company was formed [553] we went into the North Midway field or out towards Fellows and Taft during the year 1909 a considerable number of cars per day, loaded with water. Some days it would be one or two, and I don't think there was ever five when I was furnishing them out of the railroad supplies. After that it started in, I think, about four or five cars, and gradually increased right along. I don't know just exactly the dates and the numbers, but it gradually increased until it got up to a pretty big train of water-cars—probably fifty. I don't know but there were some days it would run over that. It ran up to fifty on some days, and I think there was a day or two that it ran over that. I couldn't answer your question as to how long it was after the first of January that we reached the point where we were sending as many as fifty cars a day out from the field. My memory don't serve me well enough for that. It has been about six or seven years. I can tell you where you can get the information as to the number of cars that were sent out containing water from Bakersfield to the Midway Field in 1909–1910. Mr. Young, the manager of the Kern Midway, knows every car that was billed out.

Q. Well, we had Mr. Young on the witness-stand, and he was not able to give us much definite information, and Mr. Young said that it was undoubtedly

(Testimony of F. M. Worthington.)

true that every car that passed Bakersfield going into this Midway field—every tank-car—went out loaded with water, and he thought your records would show exactly during those months and years what tank-cars were hauled out to the field.

A. The agent billed those cars out the same as any other freight. His record would probably show. And the car clerk down in the yard office, his record would probably show. But I doubt very much whether a man would be able to get those records. They were filed away and nailed up in boxes and stored away in a little building down below our roundhouse. There is no objection, as far [554] as I am concerned, to your men looking them over if he can find them.

Q. Well, you will grant us that privilege, so that, if they are not available at this time for this suit, we may have them in the future?

A. Well, Mr. Young billed that out, you know, and he has a record of those, the same as any other shipper.

Q. What I want to get at, primarily, is this: The question is as to whether all the tank-cars that went out there were loaded with water. Now, Mr. Young's records would show that only such cars as he billed out would contain water, and your record would show all of the tank-cars that went out, so that we can tell whether or not all the tank-cars that went out were filled with water.

A. I don't think you will find an S. P. car that went out there empty. But there were, I think, a

(Testimony of F. M. Worthington.)

few Santa Fe cars went out. You understand the Santa Fe operated jointly over that track. They owned a one-half interest in the Sunset Railway Company, and they sent equipment out into that field, and I had considerable trouble with the Santa Fe on account of loading their cars, and there was a time when they wouldn't permit me to load their cars with water for the reason that it took five days to make the round trip when they went out loaded with water; that is, they would spot them on what we call the transfer—that is, turning them over to the S. P.—and there they would have to be inspected by the S. P. inspectors, taken off the transfer and spotted at the water rack and loaded with water. Now, that would consume a day. Then they would send them out into the oil field at night, leaving the next morning at two o'clock, would get out there and be spotted that day and they would unload the water. They wouldn't get out there until [555] afternoon, or after. They had to double a hill. That is a hilly country, you know, and it was very much congested out there. They would be unloaded and next day they would spot them for loading with oil, and the next day they would bring them in, and the next day I would bring them in, and that, all together, consumed five days and they made a serious complaint, so that—

The greater portion of the cars that went into the field were S. P. cars. Some of the Santa Fe cars were loaded with water at that time, too. I loaded them despite the fact that they objected. During

(Testimony of F. M. Worthington.)

all of this time of 1908 and 1909 I was not seeking to show preference to any shipper, one over the other. I played that gave absolutely fair. We only furnished the water up until January, 1909. Prior to that time I made everybody order their car in the morning, and I would fill the car just before that train went out. That water was handled on a train that left at six o'clock. They would order their car either late in the evening before or early in the morning, and the first come would be first served. I made no distinction between the applicants. I wouldn't agree to furnish any man a car a day or a week or anything. I told them all first come, first served, because I didn't have enough to supply the demand.

I couldn't say positively, but I presume it is a fact, as stated in the letter written to the Gate City Oil Company on January 12, 1909, that they had commenced to get water of our company in the latter part of July, 1908. Different people were getting water some time before that, whenever we had a surplus so that we could furnish them with water.

The letter to the Gate City Oil Company says: "An order was placed by this company with your Bakersfield office for it, and we were to receive one large car of water a day. For a time the [556] water was received without interruption. For the last week, however, we have been unable to secure this water through some cause or other, and as a consequence have been short of a supply."

I presume the Gate City Oil Company was using that water for boiler purposes in drilling oil wells.

(Testimony of F. M. Worthington.)

I presume it was used for boiler water and for drilling oil wells to pour down in the hole where the casing works up and down.

Q. So that it is apparent that from July, 1908, all up until a week before this letter of January 23, you had been prepared to and had supplied that water satisfactorily?

A. Never supplied any water right along regularly. Those people wrote me letters like that and would assume that I was going to furnish them a car of water. But in the early part of the game there was quite a few of them that were trying to get water, and after that—because at first I had enough so that I gave this man a car out of what I had for a short time there, and he thought he was getting his order filled every day.

Q. Now, up to the time the Kern Midway Water Company took over the proposition you did not have such a demand for water, did you, as came on after January 1, 1909?

A. Well, I couldn't say positively. When we first started out there there was only a car or two a day. At first I guess it was a car or two a week. And then the demand gradually increased until it burdened my water supply so that I was trying to get away from it.

Q. Now, that burden didn't come on your water supply until about January 1, 1909, did it, when the Kern Midway people took it over?

A. Oh, yes, it was before that that they were after me for water, because as soon as the Kern Midway took it over he commenced [557] to supply them

(Testimony of F. M. Worthington.)

with more water than I could supply cars for.

Q. Your limitation was due to the amount of water you had, was it not? A. Yes.

Q. So that when they developed this Kern Midway supply they had plenty of water and the limitation became the number of cars. That was the situation, was it not? A. Yes.

Q. Now, in 1907 and 1908 were you having a great demand for cars of water, or was it just an occasional water demand?

A. Well, I think at first there was three or four companies, I guess, was about all that were operating at that time. My memory don't serve me very clearly on that. I know at first there were just a few companies, you know, and they would come in and ask me for a car of water. I don't think anyone wanted more than a car a day or something like that.

I couldn't say positively, but I think, though, that situation occurred in 1908. While this situation was in existence I did not have water always to furnish them. There were days when I never gave them any. This water that I furnished was for my engine supply. When we would have a little increase in business I couldn't furnish any water, because the engines had to have it all. We didn't have quite so much demand during 1907, 1908 as we did early in 1909, but as my memory serves me there was always a demand for more water than I could furnish when I was furnishing the water. And after the Kern

(Testimony of F. M. Worthington.)

Midway was formed it shifted from the water to the cars.

Q. But I am getting back in 1907. From the first of January on, during the year 1907, did you have any great trouble over the demand for water,—as you said a while ago that sometimes it was a car a month or a car in two weeks or something of that sort?

A. Well, I don't think that each company that was operating [558] at that time was asking a car a day. There was more than a car a week going out there. There were cars went out there probably every day, but they went to different companies. Every company didn't want a car a day.

Q. But what I was getting at was that in 1907 there was not this demand. You were better able to meet the demand in 1907 than you were in 1908 and 1909?

A. Yes. I am sure there was not the demand in 1907 that there was in 1909. As a matter of fact, there was only one train running out there.

Q. In 1907 and 1908?

A. In the early part of 1907.

I don't know what we charged for water in 1907 and 1908. I don't think there was any charge made for the water. There were freight charges on it. The letter that I produced from the Gate City Oil Company dated January 12, 1909, came to me through the mails. The copy of the letter dated February 16, which I addressed to Mr. Burns, Superintendent of the Brookshire Oil Company, I wrote in my office.

(Testimony of F. M. Worthington.)

I made a search through my files to look for some letters when I brought these into court and these were the only two I found. I found lots of other letters of various kinds pertaining to different kinds of water. Some was for domestic water when the population grew out there considerably,—and I was using the—the same cars that we handled domestic water in were the ones that I handled my engine water in. Of course when I had so many engines out there I was short of domestic water and I didn't get—looking through my files I couldn't locate the boxes back as early as 1907–1908.

Q. Independent of any letters that you had, do you remember any requests that you had in 1907 and 1908 from the Pioneer Midway [559] for water?

A. Well, that is a long time ago, now, to remember just a conversation over the phone. Most of that was done over the phone, by some representative of the oil company, who would call me at my office and talk with us. But there was hardly a day passed that there was not somebody called at my office, and numerous phones requesting a car of water.

Q. Do you remember any specific demand upon you in 1907 and 1908 by the Pioneer Midway Oil Company or Mr. I. Strassburger that you ship them water out in their tank-cars for use upon this section 2 in township 31, range 23?

A. Why, I remember Mr. Strassburger came to my office, yes.

Q. Do you remember what particular lands he wanted it for?

(Testimony of F. M. Worthington.)

A. Why, I really couldn't say whether he told me what land, now, or not. But I remember Mr. Strassburger calling at my office more than once. I don't know the exact dates.

Q. You furnished Mr. Strassburger water in tank-cars for some time, did you not?

A. I guess he got his share with the balance.

Q. And was that or not along in 1909, after the Kern Midway Water Company started its work, that Mr. Strassburger was taking water for up on section 30?

A. Well, he was there after cars after the Kern Midway took the water. I remember that. He was after cars. We furnished him with some water ourselves from the railroad supply.

Q. Before the Kern Midway took it over?

A. Yes, sir.

Q. Did you ever know of him making any demand on you for water specifically for Section 2, 32-23, which you refused or could not fill? [560]

A. Well, I couldn't say positively that he did, but he was using the water out there, and I didn't ask a man where he was developing or anything like that. When he came to me I just discussed the possibilities of furnishing him the water and explained to him how I could furnish it.

Q. And you were always willing during all of that time to furnish all of the water that your capacity could permit?

A. I always gave them all I could possibly spare from my supply, and when the Kern River was sup-

(Testimony of F. M. Worthington.)

plying the water I gave them all the cars I could spare from our service.

On the first of September, 1909, the Sunset Western Railroad extended from Gosford up to Maricopa—Hazelton it would be then, and Maricopa it is now. And two miles from the end of that line there was a junction there they called Pentland Junction, and they built this line they called the Sunset Western Extension—that is what we call it—the Extension, because that was built after the other. Now, they built down here about Fellows, right in here (indicating). That was the end of the track. Just north of Fellows. They then extended it down to a place called Shale. I couldn't tell the exact date when it was extended to Shale. I will tell you why. Because a man by the name of Isaacs did the construction work. I didn't do the construction work. All I did was to furnish him with a car. I couldn't tell you whether the line was extended as far as Fellows by September 1, 1909. I couldn't answer now because I don't know. It was extended out to Fellows in the year 1909 but I don't know the month.

Redirect Examination.

(By Mr. WHEELER.)

When Mr. Strassburger called upon me and asked me for cars after the Kern Midway Oil Company had been organized, I told him I would furnish all I possibly could. As a rule [561] I would encourage those men and tell them I would try to get them cars and do the best I could to accommodate them.

(Testimony of F. M. Worthington.)

I always told him that the cars were limited and that I couldn't give him any definite amount or promise him a certain number, as I couldn't get them. I had to depend altogether on the empties returning and I gave the water company a certain *pro rata* of what was requested for loading into McKittrick and Kern River fields, the general field, the Kern River oil fields, for loading oil and they got their *pro rata*. Up to the time the Kern Midway Water Company had started the water supply was from the railroad company's well. Thereafter that supply was no longer used but the Kern Midway Water Company had a water supply of its own. The water that I furnished comes from the company's wells at our roundhouse. We never at any time had sufficient water there so that we could assure anybody who came to us in 1907 or 1908 a definite water supply. We only had the one engine tank where we take water on our locomotives. The supply was limited in the well. We pumped that well night and day. Sometimes we had to keep it for our engines and couldn't send out any cars. We only gave them the surplus that we had.

When Mr. Strassburger spoke to me after the organization of the Kern Midway Water Company I do not remember that he referred to any particular location that he wanted to bring the water to. He wanted it out in the Sunset Field. All the water that we supplied was going out into the Sunset Field. We never had a surplus of cars so that we could guarantee them any amount.

(Testimony of F. M. Worthington.)

Recross-examination.

(By Mr. HALL.)

I did not discourage these people from taking water through this water supply. I tried to furnish them all the cars I could. When I was supplying the water myself I didn't try [562] to foster and build up that business and get as many customers as I could reasonably supply. I wasn't trying to get customers because I had more customers than I could supply but when the Kern Midway people took it over I endeavored to make that a source of revenue for our railroad out there. I wanted to develop the field. I wanted to see the field developed. I always referred these people to Mr. Young for water. I told them he had plenty of water. They had an excellent well there. They could load twice as many cars as they did load.

Mr. Young had almost daily demands on him for cars and the company couldn't furnish the cars. They didn't have them. The Sunset Field is forty-nine miles, I think, by rail from Bakersfield. That is all single track.

Redirect Examination.

(By Mr. WHEELER.)

As a matter of fact, in 1909 there was a good deal of freight congestion along that line. I had two or three hundred cars of oil well supplies standing around there that couldn't get out there. There was no place to locate them in the fields. The congestion was so in the oil field that they couldn't unload fast enough. They couldn't get teams to haul their lum-

(Testimony of F. M. Worthington.)

ber and supplies away from the railroad, and they would hold cars there for two or three days. The congestion was such that I could not get cars spotted when I wanted them. A man who would have a little spur-track would have three or four cars and he would have a dozen waiting to get in on that spur. That caused a congestion all along the line on the sidings or on the spurs.

Recross-examination.

(By Mr. HALL.)

There was congestion on the line in 1909. The congestion started along about in 1908. Then when they commenced [563] to get water, when Mr. Young furnished a supply of water, the congestion gradually increased, because it made it possible for those men to develop, and everybody wanted to develop out there, and they ordered oil well supplies, rig material and stuff like that, and it all came at once and kept coming. There was a pretty good business out there when I turned it over to the Santa Fe in 1911. I couldn't say just how long after that it did continue. There is only one freight train running out there now. In 1909 I had eighteen crews working out there—nine engines, and the crews were working day and night. I ran a train every time I could get them together and keep them working. We didn't have those trains carded; we ran them extra out there, under train orders, whenever we could. We would send a man out there with a lot of loads, and he would pick out the empties and stick the loads in where we took the empties out, and I

(Testimony of F. M. Worthington.)

had them switching around out there all the time. There were nine regular crews working and they worked 12-hour shifts. That would be eighteen crews on nine engines.

Thereupon by stipulation of counsel for the respective parties, the testimony of E. W. KAY, taken in the suit of United States v. Brookshire Oil Company et al., Nos. A.-34, A.-35, and A.-36—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the defendants, which said testimony is as follows:

Testimony of E. W. Kay, for Defendants.

E. W. KAY, a witness called on behalf of the defendants, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. MORRISON.)

My name is E. W. Kay; I am a resident of [564] San Anselmo. I was connected with the Stratton Water Company. I succeeded Mr. E. D. Burge as the superintendent of that company in the early summer of 1909. Well, I don't know the date. It was in 1909 and I think May or June or somewhere along there. I was connected with the Stratton Water Company prior to that time but it was not the Stratton Water Company then. We were drilling for an oil well. I think I remained as superintendent of that company until the fifth or sixth of June, 1910. I resided during that time on the properties of the company in Sec. 7, Township 32, Range

(Testimony of E. W. Kay.)

23. At that time I was familiar with the supply of water and the water conditions to a certain extent. I have not had anything to do with water in the Midway field since July, 1910. I have been engaged in other business entirely. During the year that I was in charge of that company, the Stratton Water Company did not have sufficient water to supply all of its applicants. I think I am able to state how much water we had—I have made as high as, I think, 3,300 barrels a day. When I went there we were trying to produce water out of two wells most all the time but there was really only one producing well. We pumped that well to its fullest capacity. We got all the available water. The best I could ever do was 3,300 barrels a day. That is the best I could ever do out of the two of them. But one of them wouldn't last. You could pump it a little while and it would disappear and you would have to wait several hours before you could pump it again. I cannot tell you how much water we had obligated ourselves to supply during that period. I could have supplied a whole lot more water than I could produce if I had it. I should judge that we had applications for from fifteen to twenty thousand barrels. The obligations which we had assumed were to furnish seven or eight thousand barrels I would think, and I couldn't always fill [565] that. Some days we had more than on other days.

Q. Directing your attention, now, Mr. Kay, to the properties known as the Hale-McLeod Oil Company; the California Midway; the Olig Crude; The Pacific

(Testimony of E. W. Kay.)

Crude; the Canadian-Pacific, and the Cleveland Oil Company, did you have any applications or any obligations with any of those persons to supply water, do you recall?

A. I had to furnish the Hale-McLeod Company all the water they needed if I had it.

Q. And you were obligated to any of the others, or did any of the others use water through your lines that you recall?

A. Oh, yes, I don't recall all the companies now. I can't. I have furnished water to all you have mentioned there, though.

We had trouble with the water consumers over the supply of water. That is about all I did have, was trouble. I couldn't furnish them the supply they wanted. I had to divide the water up among them the best I knew how. I had some trouble with reference to our pipe-lines. I had to watch some of them to keep them from taking the water from others. It was brought to my attention on more than one occasion that that was being done. Now, I don't know whether I should say that or not because I never caught anybody doing it, although my meters and gates would be shut off and it would be opened in other places. I would find that I would open a meter in one place and when I would go there again it would be shut off, and one that I closed up probably would be opened. I never caught anybody doing that. If I had I wouldn't have had them arrested because I thought they were doing what any of us would have done under the circumstances. There

(Testimony of E. W. Kay.)

was no way of those meters opening themselves.

I recall the Brookshire Oil Company on Section 24, Township 31-22; I do not recall any particular complaints of trouble [566] from that source. I know I had complaints all the time; I couldn't say the Brookshire any more than any other. I will say this to you, that I never furnished anybody with water that I didn't have more or less trouble. I do not think I recall a single individual that was satisfied with the supply. I don't think I can. Well, I don't know now. Maybe the Olig Crude was. I don't know of ever having any complaints from the Olig Crude people.

Cross-examination.

(By Mr. HALL.)

There were meters that measured that water in different places. Some of them were down on the line opposite the people that the water ran to; others were up near the plant. After we got the large line, most of the meters were right near our plant on Section 7. I think we got the large line late in 1909 or early in 1910. I could deliver water better than I could before because the lines would take it. I couldn't deliver any more water than I could produce. I didn't produce any more water than I could before because the lines would take it. I couldn't deliver any more water than I could produce. I didn't produce any more water than I did before. I said that I had made 3,300 barrels of water a day. That was not the capacity of the well by any means. I said that we had contracts for

(Testimony of E. W. Kay.)

about seven thousand barrels a day. I am only guessing at that. My memory is not clear or accurate on that. I did not get those figures principally from this affidavit that counsel Morrison read to me out of this brief, I know just exactly what I testified to two or three years ago, or three or four years ago, and I have got to go a great deal by that now. As far as my memory is concerned now, I can't go back to those things. I was interviewed last Thursday by Mr. Favorite in regard to these matters. I told him that I couldn't remember what the capacity of the plant was, and I say so yet. I am telling you what [567] I think it was. Since Mr. Favorite interviewed me I have read over the affidavit that is in this brief.

Our plant was broken down many times while I was there and there were lots of times that I couldn't send water out on the line because our pumping plant was broken down. That was the cause of part of the complaints from the oil men. I do not think that part of the complaint was due to the fact that some of the oil men out in the field were trying to hog the water and some taking more than they were entitled to. I think they were trying to get all the water they could so they could keep running. I think they tried to get all they could notwithstanding that they were encroaching upon the rights of some of their neighbors. We tried to dig more wells while I was there. We dug four wells and they were all failures. I think they were all about a thousand feet deep. The well from which the prin-

(Testimony of E. W. Kay.)

cipal supply of water came was about the same depth, about 900 or 1,000 feet. Those wells were drilled close together. In one well we got water and in the other one we did not. Two of the other wells we never could do anything with and in one of the other wells we could get some water. They were carefully drilled down to this same formation. There was water in all of them, but not to do any good. You could not get it out. It wouldn't fill up fast enough to pump it out. I couldn't tell you what was the cause of that. I have not been to the plant since July 5, 1910. While I was at the plant all the wells except one were put in. There were two different compressors put in after I went there. The compressors operated successfully all the time I was there. We had a 180 horsepower compressor in there.

I don't know what arrangements were made for the Majestic to get water out of the Brookshire line. I do not remember anything about it. I cannot recall any arrangement for the Logan people to [568] get water out of that line. I think I knew about the Mays Oil Company getting water out of the Brookshire line. I think they did. Because the Mays Oil Company got water before the big line was laid in, and they had to get it through the Brookshire line. The Brookshire people laid a line to the plant,—a two-inch line. I don't know whether the arrangement with the Mays Company was made with me as Superintendent of the Stratton Water Company or between the Mays Company and the Brook-

(Testimony of E. W. Kay.)

shire Company. The Stratton Water Company didn't own that line. I don't know whether the water that went up through the Brookshire line was measured in the meter at the plant. I don't remember that. I do not see how it could be measured there if it went through their line. The Brookshire line doesn't reach directly down to our plant. I do not remember whether their meter was right at the plant. I know the Brookshire people had water but I don't know how the Mays people got it. They got it through the Brookshire line, though. What became of the water after it went into the Brookshire line I don't know anything about. I don't remember whether our account for that water was between the Stratton Water Company and the Brookshire people.

Redirect Examination.

(By Mr. MORRISON.)

I remember that we had an account with the Mays people. We carried a direct account between the Stratton Water Company and the Mays Company and we also carried an account with the Brookshire Company. Separate bills were rendered to each. But I must say that I don't know what arrangements they had about getting the water through the Brookshire line. I don't remember anything about that.

This quotation that you showed me came from an affidavit that I made some time ago. I cannot recall about the date when I [569] made that affidavit. I think, though, that it was made down there. I checked up the facts at the time that I made the

(Testimony of E. W. Kay.)

affidavit. At that time I was satisfied that I was making it correctly. That was before I ever saw or heard of you (Mr. Morrison). I never saw you until I saw you here that I know of. I do not know anything about having trouble about turning the valves on in the Mays line when I saw them coming and turning them off after that. I do not recall anything of that sort. It is too long ago for me to remember. I stated in answer to Mr. Hall's question that I found water in all wells, but the supply in two of them was not sufficient to justify our pumping. The water was encountered at substantially the same depth—as I remember, they were about the same depth.

Recross-examination.

(By Mr. HALL.)

I do not now recollect of having gone to my books to check up the amount of water at the time I made out this affidavit. I do not believe I would have certified to that at the time unless it was right or unless I thought it was right. I couldn't tell you now whether that was just my memory or not. I do not now recall comparing the figures in my affidavit with the books or anything of that sort. I couldn't tell you anything about the Mays Company and my collecting bills from them. I think I furnished water to the Mays Company, the first water they used, I think, but I couldn't swear to that even today. I believe I furnished them the first water they used down there. I collected bills of the Mays Company for water they got through the Brookshire line. I

(Testimony of E. W. Kay.)

don't think the Brookshire paid for their water. I don't think the Mays paid for the Brookshire water, or vice versa. I certainly collected for the water that the Mays Company got out of the Brookshire line. I certainly collected for that independent of the [570] account against the Brookshire because I remember there was some arrangement that they made between themselves that the water could run through there. Now, I don't know what it was but I know there was water went through that line and went to the different companies—that is, to the Mays, especially. I don't think it was a fact that there was only one meter on the Brookshire line and that that was the meter that belonged to the Brookshire Company because I know that the Mays Company paid me for their water, and I know that the Brookshire paid me for their water, and I know another company that I tried to furnish water to but I couldn't, and that was the Bear Creek Company built a line of their own from the Brookshire line and pumped it into their tanks. The Mays Company didn't build its own independent line to our water plant. They built their line from our main line after we got it up in there. After that time I think we collected from the Mays Company.

Judge (the Court), I don't remember whether I made the contract with the Brookshire Company or whether Mr. Burge made it. I hardly think I could tell now whether there was any specified amount of water that the Stratton Water Company was to furnish the Brookshire people. We always furnished

(Testimony of E. W. Kay.)

all the water we could to them. That is the best I could remember now.

Thereupon by stipulation of counsel for the respective parties, the testimony of E. W. BAILEY, given in the suit of United States v. Brookshire Oil Company et al., Nos. A-34, A-35, and A-36—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of E. W. Bailey, for Plaintiff (In Rebuttal)

E. W. BAILEY, a witness called on behalf of the plaintiff, [571] in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is E. W. Bailey. I live at Taft, California. I am superintendent of the St. Helena Petroleum Company. I have been engaged in the oil business in the State of California for 17 years. I was employed in the Midway field in 1909, by the Mays Oil Company, as superintendent. We were engaged in drilling well No. 1, on Section 30, Township 31, Range 23. I was there when the well was spudded in, some time in the summer of 1909, and remained until some time in 1910. The well was drilled to a discovery of oil while I was there and became a producer of oil in commercial quantities on the 4th day of March, 1910. When we first

(Testimony of E. W. Bailey.)

started to drill we got water from the Pioneer Midway; later on we connected up with the Brookshire. While I was there we did not have a great deal of trouble on account of a lack of supply of water for drilling. We never lost any casing in that well on account of supplying the water. That was the Mays Oil Company well on the southeast quarter of 30, 31-23. We were never shut down over 12 hours at any time I remember on account of lack of water. We never lost any casing or had any casing freeze on account of lack of water.

Cross-examination.

(By Mr. MORRISON.)

We were shut down at various times for lack of water, but not over 12 hours at any time that I remember. The lack of water occurred when we were taking water through the Brookshire line. When I was with the other company we were shut down a little bit, but that was because we only had a one-inch line. We didn't have as much trouble when we were with the Brookshire. I don't remember the time when we connected up with the Brookshire, but it must have been some time along in September, I should say, 1909. I fix it in September because I know it was just about the [572] time we started there, in 1909. The well was spudded in in the summer of 1909. I am not exactly positive, but I think it was some time in March. I think their contract called that they had to start in March, and, if I remember right, we spudded in there about 20 feet and then shut down for 30 days or so waiting for money.

(Testimony of E. W. Bailey.)

That was in the year 1909. When we shut down our difficulties were nothing serious. There were no other difficulties, outside of lack of water, and waiting for money. I do not recall how many shut-downs we had. We did not have over 200 barrels storage when the well came in in March, 1910. I said that we were shut down at different times when we were getting water from the Brookshire line, but never more than 12 hours. Not that I remember. I don't know that the Majestic was on the Brookshire line. I know in a general way where the Majestic is. From the location of the pipe-line and of the lands of the two companies, I would say that the Mays would receive the water first through the Brookshire line. These times when we shut down it was because there was no water in the line.

Q. And if the Mays was compelled to shut down and the Majestic, farther away in supply than you were, you must have been compelled to shut down, must you not?

A. Well, of course, I should say that the Mays would get the water first, but I don't know.

Q. Well, did the Mays have storage as big as the Majestic, do you know?

A. I don't know what the Majestic had. The Mays property had 200 barrels storage.

Q. If the Mays was shut down for 12 hours, and it is the one that gets the water first, the only way the Majestic could possibly avoid getting shut down from the same cause would be by greater [573] storage capacity, would it not?

(Testimony of E. W. Bailey.)

A. Well, that two-inch line might have been full of water, you know.

Q. Were you not on the two-inch line?

A. Yes. But I mean on beyond the Mays.

Q. Oh, it might have been full of water after it passed the Mays? A. Yes, sir.

In reply to your inquiry as to how long that water, if the line was full of water, would last to carry on operations in drilling a well, I would say that it doesn't take much water to run a boiler, and a person could go ahead drilling—without putting water in the well you can run in at least three or four days; but the minute you are out of water you must shut your boiler down. I don't know how long the water that could have possibly been in that 2-inch pipeline between the Mays and the Majestic would have run a drilling rig. I don't know how much storage the Majestic had. I don't know whether water would gravitate through this two-inch line or not. If a person could get it all out and the Majestic was two miles away from there, you could figure up how much water they could get. I don't know whether the water would gravitate down to the Majestic or not.

I know about the drilling of the well on Section 28. I do not know as a matter of fact that that casing that well was frozen on account of lack of water and the casing lost, in September, 1909. I don't remember just when that well was drilled on 28. I don't know that that well was drilled to a depth of about a thousand feet, and that I then ran out of

(Testimony of E. W. Bailey.)

water and lost that string because I did not have water. There was only one well on the southeast quarter of 30 in 1909. The casing was lost in that well, but not on account of shortage of water. I don't know that [574] there was a casing lost in July or August, 1909, in that well. It is possible that we landed the first string of casing along in that time—stovepipe. I was superintendent of the Mays Company at that time. I know Mr. A. G. Wilkes. He was connected with the oil company at that time. I do not remember of having made any reports to him concerning the lack of water. I don't remember making any. I do not remember that I did not make any. I have no recollection as to whether I made any or not. I don't remember having discussed that situation with him and having made such report. I do not know of any application being made by Mr. Wilkes to the Santa Fe for water. The Mays line did not tap the main Brookshire line between the Brookshire and the Majestic. It tapped the main line between the Stratton Water Company and the Brookshire, just about half way. We tapped the line ahead of where it reached the Brookshire property. I said that although we tapped the line ahead of where it reached the Brookshire we were shut down a number of times, but never longer than 12 hours. We were not shut down very many times, but there were times we were shut down.

Redirect Examination.

(By Mr. HALL.)

I did not make application to the Santa Fe people

(Testimony of E. W. Bailey.)

during 1909 for water with which to drill this well on Section 30. Mr. Wilkes never instructed me to make application to the Santa Fe for water to drill that well in 1909. There was no necessity to make application to the Santa Fe for water to drill that well with.

(Witness recalled in rebuttal on behalf of the plaintiff.)

Redirect Examination.

(By Mr. HALL.)

I said yesterday on my direct examination that I lost a string of casing in the southeast quarter of Section 30. By the expression "lost a string of casing," I meant we carried it as far as we could and it got caught and we had to put in another [575] string. I did not intend to mean that we lost the hole or had to drive through the casing, or anything of that sort. We carried the pipe as far as we could, and it would get tight, and we lost it, and we had to put in another string inside. It didn't stop the drilling.

Recross-examination.

(By Mr. MORRISON.)

Mr. Sherman, who was connected with our company, was the bookkeeper. He was not in the office in the field in 1909. He must have become connected with the company some time in 1910. I don't think he was there in 1909. In drilling a well we usually endeavor to get down as far as we can with the larger size casing. By losing a string of casing, as I have testified, does not prove injurious to the well. We

(Testimony of E. W. Bailey.)

always try to carry the string of casing as far as we can, unless it is a water string—we have a certain place to land that. We usually desire to pick out the place where we land the casing in order to better shut off the water. If you lose a string of pipe before you get down deep enough to shut off this water the chances are gone on that string. If it was frozen up tight you couldn't go ahead with it. You would have to leave it just where it was.

Thereupon by stipulation of counsel for the respective parties, the testimony of E. W. RANDOLPH, given in the suit of United States v. North American Oil Consolidated et al., No. A-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of E. W. Randolph, for Plaintiff (In Rebuttal).

E. W. RANDOLPH, a witness called on behalf of the [576] plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is E. W. Randolph. I reside on the property of the Boston Pacific Oil Company at Taft, California. I am superintendent. I have been engaged in the oil business in the North Midway field in California since December, 1908. I was employed by the Union Oil Company on or about February, 1910. I was working at that time on Section 34,

(Testimony of E. W. Randolph.)

Township 31, Range 23. They were drilling on that property at the time I was there. I went there, as nearly as I can remember, February, about the 25th, 1910; somewhere along there. I was there, as nearly as I can remember, about a month or six weeks. At the time we got the well rigged up we started drilling. I think we started to spudding in about a month after I went there. The supply of water they used in that drilling came from the Stratton Water Company. I couldn't say positively whose lines of pipe it was they used down to the Stratton Water Company, but I think the line we used to the well on the property was the Union Oil Company's line, and it was laid at that time. After they spudded in that well I remained until we landed our first string of stovepipe. That was about a week or ten days and at a depth of 460 feet, as nearly as I can remember. We had no other source of supply of water than that which came through this water line from the Stratton Water Company. We had no storage there for storing up water. We had some trouble on account of the supply of water. We would just be out of water for a period of time, right along continually. I don't remember what period of time we would be out of water. As near as I can remember, probably from four to six hours time would be about the longest. I couldn't say positively. According to my judgment, I was under the impression [577] that the real cause of losing the casing as soon as we did was that stoppage in water supply. We did not have to start in a new hole on ac-

(Testimony of E. W. Randolph.)

count of the lack of water supply. We had no storage. Simply took it direct from the line.

Thereupon by stipulation of counsel for the respective parties, the testimony of CHARLES E. WILCOX, given in the suit of United States v. North American Oil Consolidated et al., No. A-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of Charles E. Wilcox, for Plaintiff (In Rebuttal).

CHARLES E. WILCOX, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is Charles E. Wilcox. I reside in Kenne, Kern County, California. At present I am a rancher. I have been engaged in the oil business. I was employed by the Canadian-Pacific Oil Company in 1909, in the North Midway field, California. I was employed in the capacity of driller. I commenced to work for the Canadian-Pacific along about the middle of December, 1909. I am familiar with the well that was started by the Canadian-Pacific on the northwest quarter of Section 4, Township 32, Range 23. It was started in December, 1909. They used water in drilling that well. I believe the water came from the Stratton Water Company. I believe it came through the California Midway line. I con-

(Testimony of Charles E. Wilcox.)

tinued to work for the Canadian-Pacific until about the 1st of March, 1910. At that time the well had not been put on production. There had been no discovery of oil in it. When I left there [578] in March, 1910, it was about 880 feet deep. During the time I was there, from the middle of December, 1909, until March, 1910, we did not have any trouble with the supply of water we had for drilling purposes. I was at the well known as the Cleveland well several times during the time I was on the Canadian-Pacific. It was right east of the Canadian-Pacific. They got their water off the same line as we got our water. They were not drilling the Cleveland during all the time I was there on the Canadian-Pacific. They shut down some time along about the 1st of the year, I believe, or shortly afterwards, and moved the rig and started a new well. I do not know of my own knowledge how they happened to lose that hole. I do not know anything about the sufficiency of the water supply that they had for drilling purposes on this Cleveland well. I know the California Midway was drilling a well on the southeast of Section 32, 31-23, at the time we were working on this Canadian-Pacific. I believe they got their water from the Stratton Water Company, through the same line we were connected on. I don't know anything about their difficulties, if any, with the supply of water. I believe they were drilling all of the time from December, 1909, to March, 1910. We had storage tanks at the well on the Canadian-Pacific. It was either a 1,000 barrel or 1,200 barrel tank, I don't know

(Testimony of Charles E. Wilcox.)

which. During the time I was drilling that well I did not have to shut down on account of lack of supply of water.

Cross-examination.

(By Mr. WHEELER.)

I went there in December, 1909, and was there until March. At that time they were drilling just one well on the Canadian-Pacific. I think we got down to 880 feet. I spudded in while I was there. I went on to the property, I believe, the 18th day of December, 1909, and we waited some time for a boiler, I believe, and some tools, and as soon as we got those [579] we rigged up and spudded in. We spudded in some time in January, some time along in the middle of January, I believe. I couldn't say. And when we got down 880 feet we left the property. During that period of time we were getting water from the line that came from the California Midway past this property and went on down to the Cleveland. I believe Mr. H. H. Blood made the arrangements. I didn't make them. I know nothing at all about the terms upon which that order was procured. We used more water in drilling that 880 feet than in any other part of the hole. I mean, we used more water for the first 380 feet. I think we got the surface water at 380 feet and used that afterwards. It took us not over a week or ten days to get down that depth. I have no personal knowledge of what the troubles or difficulties may have been with regard to the other drilling that was going on there. I don't think they all were very short of water, because they

(Testimony of Charles E. Wilcox.)

were always working pretty steady. I wouldn't say that they were short of water. I saw them working. I saw them working night and day. I was there at all times. I couldn't say that they worked all night and all day, were running continuously, but I would say they worked very steady. I know that work was being done on those claims. What their personal difficulties may have been with water, I don't know. As a matter of fact, I don't know what their private business was or what their private difficulties may have been with their supply of water. We spudded in with 16-inch stovepipe casing. We lost the 16-inch along about 600 feet, I believe, something over 600, and we put in 14-inch inside of it. We didn't lose any casing. Well, we did lose the 14 inch at 880 feet. That is, we didn't get it through the wash. That is where we left it. I didn't know of personal encounter between Mr. Blood and Mr. Lamb on account of the shutting off of water between one claim and the other. There [580] were no difficulties to my knowledge with water being shut off between one claim and the other while I was there.

Redirect Examination.

(By Mr. HALL.)

After we encountered this surface water at 330 feet we did not continue to use water out of the California Midway line to drill with. We used it only for boiler purposes. When I said we lost a string of casing, I meant the casing simply filled up and we couldn't carry it any further. The freezing of that casing at that time was not in any manner due to a lack

(Testimony of Charles E. Wilcox.)

of water supply. In drilling wells in that field, you couldn't help using the surface water. After we encountered that surface water we didn't have to use any more water in the hole to drill with. The Cleveland well was a little over a quarter of a mile from where I was drilling on the Canadian-Pacific. There was nothing which obstructed my vision of the operations on the Cleveland well. I could see at all times. There was nothing to obstruct a man's vision from seeing operations on the California Midway wells.

Thereupon by stipulation of counsel for the respective parties, the testimony of BENJAMIN K. STROUD, given in the suit of United States v. North American Oil Consolidated et al., No. A.-48—In Equity, in the Southern District of California, was read into the record in this cause on behalf of the plaintiff, which said testimony is as follows:

Testimony of Benjamin K. Stroud, for Plaintiff.

BENJAMIN K. STROUD, a witness called on behalf of the Government, having been first duly sworn, testified as follows: [581]

During the year 1909 I would not say that there was any source of supply for water for drilling and boiler purposes in the vicinity of Section 2. The nearest railroad to section 2 at that time was about three miles south. During 1909 we were getting our supply of water for drilling on Section 30 from tank-cars, cars hauled out by the railroad. It was less than a mile to our main tank on Section 30 where we were drilling from the station where the tank cars

(Testimony of Benjamin K. Stroud.)

were side-tracked and the water unloaded. I think the Pioneer Midway Oil Company was paying 3¢ per barrel for water delivered at that siding. The water came from Kern City, near Bakersfield. Our company drilled two wells on Section 30 with water secured in that manner. They were drilled until they were brought in as producing oil wells with water that was purchased from the tank-cars. We supplemented that water on one occasion, I remember, with water from the Stratton Water Company. I think that was only for a few days. The source of supply of the Stratton Water Company during 1909 was on Section 7, in township 32, range 23. I have no knowledge of any water pipe-line in the vicinity of Section 2 in 1909. I have no knowledge that the pipe-line was extended to Section 2. I don't know from what source the water was obtained in 1910 when the wells were drilled on Section 2. In the early days I knew of people hauling water in tank wagons from near Buena Vista Lake to Section 26, township 32, range 23. I was told by my father that he hauled water to Section 26 and (indicating) they went over this range of hills there. They had enough water to do drilling during daylight by having a great many teams hauling water. They hauled it ten miles. The lake that I refer to is Buena Vista Lake. I think it was in 1901 or 1903 that my father hauled from Buena Vista Lake to Section 26, township 32, range 23. When we were drilling on Section 30 in 1909 the principal source of water [582] supply was from these tank-cars. The nearest point from Sec-

(Testimony of Benjamin K. Stroud.)

tion 2 to the railroad in 1909 was about three miles. There was a gradual slope from Section 2 to the railroad. It was practically level from Section 2 to the railroad. In 1909 there were no developments being carried on on the lands within the vicinity of Section 2—within a radius of a mile or so of Section 2. During 1909 I knew of no wells that were being drilled with water that was being hauled out from the railroad in tank wagons from the tank-cars at the railroad. There was no water hauled from the railroad by wagon. We were piping the water from the railroad to Section 30. I don't know just what companies were using water in the same way we were. I knew of some companies down here near Taft. They had a water supply here—used to pump the water up to Section 22 and 23, about a mile or a mile and a half from the railroad. Those are the only ones I have positive knowledge of using water from tank-cars. There may have been others. I did not make any effort during the time from the middle of August, 1909, to get water and bring it on Section 2. I had no instructions from Mr. Strassburger or any other official of the Pioneer Midway Oil Company to procure water to commence drilling on Section 2. I was told that they had made efforts to get water on Section 2 during 1909. Mr. Strassburger told me—I don't know with exact reference to the water situation—but he told me that he intended to develop Sections 2, 12, and 18. I don't know that anything was said about the exact date, but my impression was that we were to drill those sections, some time in the

(Testimony of Benjamin K. Stroud.)

future. I don't remember that we ever discussed any specific efforts Mr. Strassburger had made during the year 1909 to get water on to Section 2 for drilling purposes. In drilling on Section 30 I suppose we were averaging 400 barrels of water a day—something over a tank-car of water. I think a tank-car holds [583] about 300 barrels of water and we used about three cars every two days for the two wells. I have been engaged in drilling oil wells about twelve years. I have been a practical oil driller. In my opinion, it would have been possible, with a certain amount of difficulty, in the year 1909, to have piped water procured from tank-cars from the railroad to Section 2, assuming that there was a supply of water at the siding. It would not have been at all practical to have hauled water out from the siding to Section 2. The cost would have been prohibitive in the first place, and in the second place it takes a great deal of water—would have to keep a good many teams on the road; and when you start one of those deep wells you have to keep going. You can't shut down at night as they did in Section 26 in 1901. You could do that in shallow formations. The wells on Section 26 were 1200 feet deep, but they stood up. The objections to hauling water out in tank wagons were the cost and also the question of supply. My father estimated the cost of hauling from the lake up there at 80 cents a barrel. The contour of the country was such that you could haul the water without difficulty if you had plenty of wagons and plenty of means and if you had an adequate sup-

(Testimony of Benjamin K. Stroud.)

ply of water. Section 2 is about ten miles from Buena Vista Lake. There was not to my knowledge any water supply company taking water out of Buena Vista Lake in 1909. There was water in Buena Vista Lake during that year. I had no trouble with other people trying to jump Section 2 during the year 1909. There was considerable jumping going on on other lands out there by other parties in 1909.

I have heard of the Withdrawal Order of September 27, 1909. I heard of it directly after it was made, saw it in the papers. I heard of it within a few days after the order was made. I no doubt discussed the order with Mr. Strassburger or other officials of the Pioneer Midway Oil Company, but I don't remember what was said. [584]

Q. Was it practically possible to commence drilling in view of the conditions then existing in obtaining water?

A. I can only tell you what my experience was in Section 30. There we had considerable trouble in getting water at different times. We were frequently shut down on the wells we were then drilling for lack of water. We received the water in the tank-cars in which oil had been shipped out from the field. Those oil cars were taken back to Kern and there loaded with water, and all the oil cars would have from a foot to two feet of oil in the bottom of them, heavy oil, and this oil of course, laying in the car, would cause us a great deal of trouble in clogging up the pipe-lines. We would frequently have to cut

(Testimony of Benjamin K. Stroud.)

the lines and build fires around them so we could get the oil out. There were many days when the railroad people didn't shunt the cars into our siding properly. The siding we had there was also used by the Santa Fe Railroad Company for the loading of these oil tank-cars, and our cars had to be shunted in ahead of them and very often this was not done, causing us all sorts of trouble.

Q. In your opinion as a man skilled in drilling oil wells, was it practicable to obtain water from the railroad company and use that water in drilling the wells on Section 2 in view of the conditions existing in the year 1909, in view of the unwillingness of the railroad to perform the service, the topography of the country, available supply and the necessity of drilling a deep well?

A. Yes, we did contemplate a deep well. I supposed it would be very deep. If we had to depend upon our supply from the railroad, we would have had to install a boiler right at the railroad for the purpose of forcing the water through, as well as a water-tank. And then we would have to have laid a pipe-line through the country, and it all depends upon how much water we could have [585] gotten from the railroad. According to our experience on the Pioneer Midway there, I think we would have had considerable trouble.

Q. Did you regard it as a practical, business-like method?

A. I don't think it would be because we certainly had enough trouble with the Pioneer Midway on the water situation.

(Testimony of Benjamin K. Stroud.)

Q. What happens when you are drilling deep wells when you are short of water?

A. It is a very risky proposition. If you have not enough water to go on, you might stick or lose a string of pipe. You are carrying the casing through the formation and, of course, this continually falls in and if it caves suddenly, it is liable to freeze or stick so that it cannot be moved. In that case, you would have to insert a smaller string of casing and proceed with that. If it happened often enough, you might never reach the oil sands. On the Pioneer Midway Section 30, we had a great deal of trouble from lack of water.

Q. Just explain how the water is used to keep the hole clear.

A. The weight of water inside the pipe holds the formation back on the outside of the pipe and in that way, we keep the formation from caving in. If the water in the hole starts to go down in the inside, the formation drops down on the outside.

Q. It is an extremely hazardous proposition to begin drilling a well without a steady supply of water on hand?

A. Yes. You might drill for days and not have that trouble and then strike a formation that might require a constant stream of water.

Q. Was there any source from which water, in adequate quantities, could have been obtained for the purpose of drilling on section 2 in the year 1909?

A. There was the Stratton Water Company. Previous to having [586] charge of the Pioneer prop-

(Testimony of Benjamin K. Stroud.)

erties, I had charge of two smaller properties on Section 15, 32-23, and Section 21, 32-23, and we were shut down there for three weeks at a time for lack of water.

Q. Were the Stratton Water Co. willing to sell you water?

A. We did use some water from the Stratton Water Company on the St. Lawrence Section. It was very uncertain. It was the worst water in the field. We were continually burning the boilers with it. We could only run a boiler five days and then have to shut down and clean the boiler. The Santa Fe also had a water supply in there from McKittrick, piping fifteen miles from their wells, but that was also very uncertain. The Pioneer tried to get water from them, but could not. They wanted twenty-two cents a barrel for it. They did supply a few of the companies in the field, some of the older ones, but they refused to supply the new companies.

Q. You know of no other available source of water supply?

A. The Standard Oil Company had a pipe-line in there, but they would not supply water to anybody. They did not want to make themselves a public service corporation of water.

Q. As a matter of fact, you were having an exceedingly hard time to get sufficient water to keep the Pioneer and St. Lawrence wells going on Section 30?

A. Between our labor troubles and water troubles, we were having a pretty hard time out there.

(Testimony of Benjamin K. Stroud.)

Q. The water question is one of serious moment at all times?

A. It was the thing that gave me more anxiety than any other one, with the possible exception of the labor.

Q. In your opinion as a competent oil man, knowing the existing conditions as to the scarcity of water, if you had located Section 2 for oil and had constructed your derricks and were ready to proceed with drilling, would you deem it practical to proceed [587] with the drilling?

A. In view of our experience on the Pioneer Midway, it would be a hazardous undertaking.

Q. You consider yourself a competent oil man?

A. Yes.

Q. You would not undertake the drilling of wells with the uncertain water supply at that time?

A. I don't think I should.

Q. Was there anything in the nature of the work that was being done by the Pioneer Midway Oil Company on Section 2 which made you doubt in any way the good faith of the work that was being done in actual drilling?

A. No. We had a substantial type of derrick up there and my understanding from Mr. Strassburger—when he hired me was that all those sections were going to be drilled.

Q. There was nothing in the nature of the work, either that had been done or was being done under your direction, which gave you the slightest reason to

(Testimony of Benjamin K. Stroud.)

suspect that it was not the *bona fide* intention of the company to drill?

A. We didn't skimp the work at all.

Q. The work that was done was all that could be prudently and reasonably done at the time you did it? A. Yes.

Q. Did a man live on each one of those quarter sections in Section 2? A. Yes.

Q. At all times?

A. Yes, while I was there. They did such work as could be done prior to the obtaining of a water supply.

(By Mr. LEDERMAN.)

Q. Was there a camp established there?

A. Yes. We had a commissary there on the north-east quarter. [588]

Redirect Examination.

(By Mr. HALL.)

Notwithstanding all of these difficulties which I have enumerated, the work on Section 30, conducted by the Pioneer Midway Oil Company in 1909, progressed until oil was finally discovered on that section. We meet a great many difficulties in the construction of an oil well. In those days we didn't know the territory as well as now and were in difficulty about fifty per cent of the time. It was the duty of a competent superintendent to meet and overcome those difficulties, and in the drilling of the wells on Section 30 I finally succeeded in getting oil. The well on Section 30 came in in April, 1910. It was started in June of the year before. In all min-

(Testimony of Benjamin K. Stroud.)

ing operations, both for oil and for the metalliferous ores, superintendents of properties meet with difficulties. All mining, in my opinion, is a very hazardous procedure which is filled with difficulties that must be met and overcome by the superintendent. When we were drilling on section 30 for the Pioneer Midway Oil Company we met difficulties and overcame them. In my direct examination I said that it would take from twelve to fourteen days to actually get ready for drilling on Section 2, assuming that a water supply was there. If for any reason I had known at that time that the right of the Pioneer Midway Oil Company to the section in question was likely to have been cut off or lost to the company for any reason whatever unless drilling had been commenced upon the property on or before the 27th of September, 1909, I should have taken orders from Strassburger.

Q. Provided that you were then, in the middle of August, 1909, claiming the right to Section 2 and you had known that there was a possibility of you having lost your right personally to the section if you did not commence drilling an oil well on each one of the quarters prior to September 27, 1909, what would you, as a [589] careful competent oil man, have done?

A. I think I should have tried to start drilling there under some conditions.

Q. If your right depended upon the securing of water by hauling it out in tank wagons, would you have adopted that method?

(Testimony of Benjamin K. Stroud.)

A. Had I considered the land worth that effort, I should have done so.

Q. If you had considered the land worth the effort and you thought that your right was about to be foreclosed, would you have started a pipe-line from the railroad to pump the water out to the section, assuming that you could have gotten water in tank-cars at the railroad? A. Yes, I probably should.

Q. How long would it have taken to have laid a pipe-line from the railroad to Section 2?

A. About five days.

Q. Provided you could get pipe? A. Yes.

Q. How long would it have taken to install a pump to have pumped the water?

A. At least 5 or 6 days.

Q. The laying of the pipe-line and the installing of the pump might have been carried on simultaneously? A. Yes.

Q. If you had had the material and the money in 1909, you might have had a pipe-line and a water system established there in anywhere from 5 to 15 days. A. Yes, I suppose so.

Q. Would it have been possible in 1909 to have laid a pipe-line for a water supply from Buena Vista Lake to section 2?

A. It would have been possible just as it is now.

Q. They get water from Buena Vista Lake to section 2, do they not? [590]

A. They have wells there. They get water from the wells. I think the Honolulu Consolidated is getting water from the lake.

(Testimony of Benjamin K. Stroud.)

Q. When was the well in Section 2 drilled?

A. I think the well in Section 2 was put on in 1901.

Q. You referred a moment ago to section 2. You mean Section 2 which borders on Buena Vista Lake?

A. Yes, 32-24.

Q. Do you know whether the water supply for the drilling of the oil wells on Section 2, the one involved in suit, was eventually obtained.

A. I do not. After giving up charge to Tryon, the superintendent that actually started development, I don't know what happened on the section. . . .

Q. Suppose that on the 15th day of August, 1909, you were in possession of the property in question and it was in the condition it was in when you went there, and someone else had also a location on it and was attempting to discover oil prior to the time you made a discovery, would you have changed your methods of development in order to make a discovery prior to the intruder who was there attempting to make a discovery,—that is to say, there was a co-occupation, to see who would be the first discoverer of oil and have the first valid location?

Mr. BOWIE.—Objected to as hypothetical.

A. Under those conditions, I would have hauled in drilling machinery and actually proceeded with the work of spudding in.

Q. What would you have done for a water supply?

A. I would have gotten it the easiest and quickest way I could, if I could get it at all.

(Testimony of Benjamin K. Stroud.)

Recross-examination.

(By Mr. BOWIE.)

I understand there was a well sunk on that [591] property previous to this time in the hope of getting water. I never was out to the well, but simply heard of it. I heard it was on Section 2 and a failure.

Redirect Examination.

(By Mr. HALL.)

I don't know by whom that was drilled. I didn't visit that well. I think it was about six or seven hundred feet deep. I don't know where they got the water to drill that well, unless they got it from the Standard Oil Company. I don't know who did that drilling. I don't think it was the Pioneer Midway Oil Company. I don't think Mr. Strassburger ever talked to me about that well that was sunk in the attempt to get water. I don't think we ever talked that over. [592]

Thereupon, under stipulation of counsel, the testimony of R. H. BARE given in the suits of United States vs. Brookshire Oil Company et als., Nos. A.-34, A.-35 and A.-36, in the Southern District of California, was read into the record in behalf of the plaintiff and is as follows:

Testimony of R. H. Bare, for Plaintiff (In Rebuttal).

R. H. BARE, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

(Testimony of R. H. Bare.)

Direct Examination.

(By Mr. HALL.)

My name is R. H. Bare. I live at Maricopa. I am a driller. I have been engaged in drilling oil wells about 25 years, in Pennsylvania, Texas and California. I have worked in the oil fields of California about 15 years. In the year 1909 I was working at Edna, California, San Luis Obispo County, and on the 1st of August I left there and came to the Midway field. I was employed by the Majestic Company in the Midway field. I commenced work on well No. 1, on the northwest quarter Section 23, 31-22. The well had not been spudded in when I went to work there in August. It was spudded in on or about the 10th day of August, 1909, and I continued to work on that well about 20 days. There was a discovery of oil made in it while I was working on it, at a depth of about a thousand feet. I know that oil was produced for sale commercially from this depth in that well, up to about the 1st of December it produced at the rate of about 30 barrels a day and was used there locally and tanked on the property for the different wells. The water that was used in the drilling of the Majestic No. 1 came through what is known as the Brookshire water line from the Stratton Water Company. During the time I was working there, from August on to discovery, there was not any shortage in the supply of water for drilling purposes, not to the best of my knowledge. [593] We took care of our water supply at that time by a 1500 barrel tank.

(Testimony of R. H. Bare.)

We had a thousand barrel tank, so it was said, and a five hundred barrel tank, so they told me. I don't know the dimensions of the tanks exactly, but approximately about 1500 barrels storage. We did not have any shut-down from the time the Majestic well No. 1 was spudded in until this discovery of oil, on account of lack of water. When the water came out of the water line it went into the storage, and when we wanted to use it for drilling we took it from the tanks, from the storage. During that time I did not notice any material diminishing of the supply of water contained in those two tanks. We had approximately about a thousand barrels of water in storage there at all times. I drilled eight wells in that same section of ground besides the Logan. The record shows that we started to spud in the Logan on the 19th day of October, 1909. We got the supply of water for Logan No. 1 out of what is known as the Brookshire water line. It took us about 45 days to drill Logan No. 1. It made a very heavy oil in commercial quantities, about 1,385 feet deep. We did not have any trouble with our water supply during the drilling of Logan No. 1. We were not compelled to shut down at any time during those 45 days on account of lack of water supply. The next well that I drilled in that vicinity was the Majestic No. 2. It was started on or about the 10th of January, 1910. We got the water that was used in drilling Majestic No. 2 from what is known as the Brookshire water line. We used water from that line during the entire time Majestic No. 2 was being

(Testimony of R. H. Bare.)

drilled. We did not have any trouble from lack of supply of water during the drilling of that well. In the Majestic No. 2 we had discovered and produced oil in May, 1910, at a depth of about 1,400 feet. I knew a well on Section 23 known as Gem Well No. 1. I worked on that well. It was started on or about the [594] 15th day of January, 1910. It was brought in as a producing well, but I do not know the depth. It was brought in about the same time—or a few days after we finished up Majestic No. 2. I am satisfied they got the water with which to drill Gem No. 1 from the Chanslor-Canfield line or from the Santa Fe. I know that they hitched onto that line and had a pipe across our property. I never heard of them having any trouble with Gem No. 1 on account of lack of supply of water.

I have had experience with the freezing of casing in the drilling of an oil well. The freezing of casing is mostly due to heaving sand, or shifting sand. Heaving sand is the principal cause, I think, and the formation in general. Even though there is an adequate supply of water for drilling purposes, oftentimes it will freeze in a very short time so that it is impossible to move it. Oftentimes in 15 minutes. It doesn't make any difference about the supply of water at all whether a pipe is freezing. Of course oftentimes it is caused from the negligence of the man operating the well. We always blame ourselves, anyway. That territory was very easy locality to take care of a pipe and keep it moving. A very easy locality. We shut down over Sunday

(Testimony of R. H. Bare.)

a number of times on the Majestic. We would move our pipe, generally pull it up the length of a joint, that is, moving it past the longest joint of pipe, in a string, which might be twenty-three or twenty-four feet; generally we would move it up twenty-five feet, letting it back again or leaving it stand. It is not a fact that freezing is due more to lack of movement in the pipe than to lack of supply of water in the hole. It is according to the conditions an awful lot. You take that territory there, we had a dry hole until we got the first discovery, and it was not necessary to carry water there at all, and it made drilling so [595] much easier to keep a dry hole, and we had no casing trouble until we got to the oil sand, and then we didn't have any casing trouble with the exception of a few boulders. When you pull up the pipe, as I described a minute ago, it does not take as long to clean that hole again as it did to originally drill it. It very seldom caved to speak of. That is, if we were in any of the strata above the oil sand. Very little cleaning out. I have drilled nine wells in that particular locality. They are as follows: The first was No. 1 Majestic; the second was the Logan; the third was No. 2 Majestic; the fourth was No. 5; the next was No. 6; and the next was No. 9; the last was No. 10. That was Tumador property afterwards, you understand. They took that over, I think, in April, 1911.

Cross-examination.

(By Mr. KAETZEL.)

I am at present engaged in drilling for the K. T.

(Testimony of R. H. Bare.)

& O. Company in Maricopa. I had charge of the Tumador property approximately about three and a half years. I was superintendent for the Tumador. The rest of the time I have been employed as a driller. I drilled first on Majestic No. 1, started on or about the 10th day of August, 1909. That well made a discovery of oil while I was drilling. It was not finished. We produced oil at about a thousand feet or a little over for up until about the first of December, 1909. They went back and deepened it. They made this discovery on about the 1st of September; possibly a few days before. It was the latter part of August. I went from that well to the Logan. The records show that we started to spud in on the 19th day of October, 1909, on the Logan. We drilled on that well up to the first of the year. We had a well that would make very heavy oil in commercial quantities at about 1,335 feet. [596] We made that discovery along about Christmas time, about the 25th of December. The next well I drilled was No. 2 Majestic. We started that on or about the 10th day of January, 1910. We drilled until about the middle of April, had a 60 barrel well at about 1,400 feet or a little over; about the middle of April, 1910, we made that discovery. The next well I drilled was Majestic No. 3. I don't remember when we started the Majestic No. 3, but it was in the summer. We made a discovery in that well. I can't remember the date. It may be possible that I testified on my direct examination as to the date, but I don't remember it just now. I don't remember

(Testimony of R. H. Bare.)

the time we made the discovery in No. 3, or what time we started to drill it. I have not had access recently to the records of either of these companies, not within the last three years. I got these dates from personal memory. I remembered them the best I could. I haven't stated positively that any of the dates are correct; I say on or about, if you will notice. I am testifying from recollection; absolutely no one has told me about these dates. It is possible that I have had a conversation with Mr. Kerran about this case. I have had conversations with quite a number of men in regard to that particular property. I couldn't possibly state now whether I had any with Mr. Kerran. There are several that I met that I don't know their names. It is possible that I know Mr. Kerran, if I met him; but I don't know his name. I don't know whether I know him or not. It is quite likely that I have met that gentleman (indicating Mr. Kerran), but I don't recognize him. I don't remember whether I have seen him or not. I don't know whether I have talked with him about this case. I think I know Mr. Favorite. I am not sure I do. It is possible that I have talked with him about this case. I am not sure whether I have or not. I am not very well acquainted with Mr. Hamel. Possibly I know him [597] when I see him, but I don't know his name. That is the first time, probably, that I have heard his name mentioned. I have seen the gentleman sitting at your right since I have been here. It is possible I have seen the gentleman before I came here. I don't

(Testimony of R. H. Bare.)

know whether I ever met him before I met him here. I saw him here since I came to the city. I am pretty positive I have not talked very much about this case. I am not sure whether I talked with him at all about it. I can't recollect all the people I talked to on this proposition. It is quite likely I have talked with someone in the Government employ about this case before I came to San Francisco. I know I have. I don't know any of their names. I could possibly recognize a few of them. None of them told me any of these dates. The only man that told me any dates at all was a man that is secretary of the General Petroleum Oil Company, a man by the name of Stevens. He brought me some records that were supposed to have been—to have my signature to them, that I never signed at all. It was taken care of by Mr. Johnson, all the records. Also the records of the Majestic up to the time I took charge of them. That was in the latter part of May of this year. He just showed me the dates that we started the Logan Oil Company. He showed me the date off of these records. That is the only dates I am positive about. Then I remember that date particularly of my own recollection. That is, from May to this time I remember positively. The other dates I remember accurately, since 1909 and 1910. I kept the tour reports of those wells after I took charge of the Tumador Oil Company. I took care of the logs at that time, and the reports. I didn't keep any of the reports of the Majestic, Gem or any of these other companies. I turned them back to the company when I got through

(Testimony of R. H. Bare.)

there. In that immediate neighborhood we didn't use water to keep the casing from freezing up until we got the oil sand. [598] Of course it is possible other people did. I am just speaking for ourselves. I am speaking merely of our conditions and the way we found them. That territory varied from about 1,500 to about 1,950. It is not what we would call deep territory. It was just about ordinary. I have been a driller for a long time. It is my testimony that water was of no benefit at all in preventing casing from sticking in that neighborhood up to the time we got to the oil sand, about a thousand feet. It was not necessary to put any water in the hole at all, that is, except for drilling purposes. In the case of heaving sand, the water is a big benefit at times in preventing the casing from freezing. We didn't have any heaving sand in that territory until we got to the first oil sand. The reason I say water was of no benefit was simply with reference to this particular well where there was no heaving sand. If there is any heaving sand encountered then water is of great benefit. It is practically essential to safety in case of heaving sand. Yes, we had heaving sand in the wells which we were drilling on the Majestic No. 1 camp; that oil sand will heave as a rule in that territory. The first well that I drilled was the Majestic No. 1. I commenced that on or about the 10th day of August, 1909; we drilled there 20 days. We encountered heaving sand just where we got the oil sand, and that is where we put it to production. We did not use water to keep the casing from freezing.

(Testimony of R. H. Bare.)

We set 8-inch pipe in already perforated and lifted the 12½ and let it produce. I suppose there was considerable demand for water on that particular well at that time. I don't know what the conditions were outside, but we got water, and it appears there were a great many more people starting up at that time. There was no demand for water at that well. The demand for water at that well was not out of the ordinary. Possibly about 65 or 70 barrels a day. That was about all we required. The next well I [599] mentioned was the Logan well, which was drilled to a depth of 1,325 feet. I spudded it in. We got a lot of water sand at a little over 700 feet in the Logan. We did not use any very great amount of water in that well. The well itself made about as much water as was necessary. We did not require very much water outside of the ordinary drilling water, mostly for boiler purposes. We drilled on the Logan until about the last of 1909. Then I went to Majestic No. 2. I spudded in that well about the 10th of January, 1910. We encountered considerable heaving sand at that well after we got through the oil sand on top. We figured we would drill that well through the water strata—we got a big water strata at about 1,800 feet which we afterwards capped off. We reached this 1,800 foot depth about the first of July, 1910. Up to the time we encountered this depth in Majestic No. 2, we had been using possibly 75 barrels of water a day. We got water for this well out of what is known as the Brookshire water line. To the best of my knowledge

(Testimony of R. H. Bare.)

that line came from the Stratton Water Company. The first well was the Majestic No. 1. They pumped the oil produced from that well. The production was from the first sand. I think that oil was about 17-gravity. We wouldn't call it very heavy oil at that time, but it was considered very good. Majestic No. 1 was on the northwest quarter of 23, 31-22.

Redirect Examination.

(By Mr. HALL.)

I would place the daily average amount of water required in the drilling of wells in that vicinity at between 90 and 100 barerls under all conditions. That is just an estimate. I am not very familiar with the drilling of the Brookshire wells. I know they were in operation when I went there and I was acquainted with some of the men, but I don't know any of their conditions at all, whatever. [600]

**Testimony of R. H. Bare, for Defendants (Recalled
—Cross-examination).**

R. H. BARE, recalled for further cross-examination by defendants.

(By Mr. MORRISON.)

I didn't work on the Bear Creek property at all. I worked on the Majestic. I couldn't possibly enumerate the wells and tell when each one was started and finished and the depth, with the exception of very nearly the exact dates of Nos. 1, 2 and 3. I can't remember the exact dates. I could give you a very good idea of when they were. I left the employ-

(Testimony of R. H. Bare.)

ment of the company I was working for. I just simply thought it was to my advantage to take a better job. I was not discharged for drinking. There was nothing that I know of said about my drinking during the time I was employed. Nothing at all.

Redirect Examination.

(By Mr. HALL.)

I have worked for the K. T. & O. for nearly two years. I am still working for them. I was subpoenaed from my work down there for the K. T. & O. as a driller to come here and testify. The K. T. & O. is said to be one of the biggest drillers in this territory. I am now in charge of the drilling work for them.

Mr. HALL.—It is also stipulated between Mr. Wheeler and myself that the record might show that Bear Creek No. 1, in the southwest quarter of Section 14, 31-22, was spudded in in late June or early July, 1909, and was finished early in September, 1909, and that that well was drilled with water from the Stratton Water Company through the Brookshire water line.

Mr. WHEELER.—In late June or early July, 1909.

Mr. HALL.—Yes. [601]

Thereupon, under stipulation of counsel, the testimony of T. S. KINGSTON given in the suits of *United States v. Brookshire Oil Company et als.*, Nos. A-34, A-35 and A-36 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of T. S. Kingston, for Plaintiff (In Rebuttal).

T. S. KINGSTON, a witness called on behalf of plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is T. S. Kingston. I reside at Fellows, California. I am superintendent of the oil property of the Hawaiian Oil Company. I have been engaged in the oil business for 15 years. During that time I have been employed as a driller and superintendent. During the fore part of 1909 I was employed on Section 5 and Section 30 in Township 32 South, Range 23 West. The St. Lawrence property is on Section 5, right south of Fellows. During 1909 I was drilling one well on the St. Lawrence Company's property. The well was commenced in December, 1908, and it was not completed when I left there on August 1st, 1909. We had struck some heavy oil in the well at that time, but were going on down to the lighter oil. During 1909 their source of water supply for drilling that well on the St. Lawrence property was from the Stratton Water Company. We got water from the Stratton Water Company during the entire time I was there up to August 1, 1909. We got all of it except running water. We shut that rig down before I left. The rig was indirectly shut down because of lack of water. The trouble in regard to the water occurred because we

(Testimony of T. S. Kingston.)

didn't have a large enough reservoir or tankage, and the boys working on the well let the water run out and burned up the boiler. They shut the water off at the Stratton Water Company. We used a [602] 100-barrel tank to conserve our supply of water at the St. Lawrence well.

I was also using water on Section 30, where I was drilling for the Pioneer Midway Oil Company. I was drilling on the Northwest and Southwest quarters of Section 30. We started on the Southwest quarter along in January, 1909, sometime, and on the Northwest quarter in May some time. The well on the Southwest quarter had been finished when we started the one on the Northwest quarter, but we had made a discovery of oil. We shipped our water for drilling those two Pioneer Midway wells on Section 30 in tanks from Bakersfield. We got the water out from the end of the railroad to Section 30 through a pipe-line. We shipped one and two tanks of water a day to these Pioneer Midway wells. We ordered the water by telephone from Mr. T. M. Young. He resided in Bakersfield. He had an office in the Land Company Building. I think it was in Bakersfield. He did not have any connection with the Santa Fe Railroad Company or the Sunset Western Railroad Company that I know of. Mr. Young was Secretary of several oil companies, and they organized this little water company to supply water out through the west side, to different companies along the line, and he attended to the loading of the cars in Bakersfield. The cars were loaded in East Bakersfield some place.

(Testimony of T. S. Kingston.)

I do not know the source of supply from whence this water came. Usually we had to telephone Mr. Young two days before we needed a tank of water. We could sometimes get it by telephoning the day before, but they always asked you to give them two days' notice. We had no great trouble in getting our water supply for drilling those Pioneer wells in 1909. We had 2,000 barrels storage. We were figuring on keeping those tanks full. We did not have to shut down during the time I was there in 1909 either one of those Pioneer Midway wells because of lack of a supply [603] of water. It did not require any extra "pull" or extra friendly relations with the Sunset Western or the Santa Fe Railroads or any of the officials that I know of to get that water supply at that time. I didn't make any arrangements with the Santa Fe. It cost about 6 cents per barrel, I believe, to deliver that water to the end of the railroad at Fellows. I think that was it. I am not positive, but I think that was the price. I think the Stratton Water Company was charging 6 cents per barrel at that time. The railroad ended at the town of Fellows in 1909. Where we unloaded our water was right on the line between Section 6 and Section 30, and we had one 500-barrel tank right on the line, and then a 1500 barrel tank down on the corner of Section 30. The first tank I refer to was on the line between Sections 6 and 30, right at the town of Fellows. If we were in a hurry for the water we had a little pump there with a gasoline engine and we shoved it down. But if we had plenty of water down at the lease we

(Testimony of T. S. Kingston.)

let it gravitate down. We never had any trouble in stopping drilling on account of lack of water on this Pioneer Midway well on Section 30. I think the railroad was continued to the town of Shale on the West half of Section 25 in the fall of 1910.

I knew about the Mays well that was being drilled on Sec. 30 near the Pioneer Midway well in 1909. They took water a little time from us, but we couldn't supply them with our system, so they made arrangements with the Brookshire. They got water out of the Brookshire line. The Mays well was not shut down that I know of on account of lack of water.

Cross-examination.

(By Mr. KAETZEL.)

I do not know whether the Mays was shut down for lack of [604] water or not. I was superintendent of those companies in 1909. The St. Lawrence Company procured its water from the Stratton Water Company. That well was one of the nearest wells in the entire field to the Stratton source of supply. It was not over three-quarters of a mile from the source of supply of the Stratton Water Company. The water was shut off from it on one occasion. I said that I did not use any influence or pull to get tank-cars from the Santa Fe Railroad. I knew Mr. Strassberger. He was the managing director of the Pioneer Midway Company. I know that he leased a lot of land to the Chanslor and Canfield, which is the Santa Fe Railroad. I do not know as a matter of fact that Mr. Strassberger, through his influence and connection with these different enter-

(Testimony of T. S. Kingston.)

prises, was getting practically all the cars the Santa Fe Railroad had at that time, tank-cars for water for the use of our company. Mr. Young, the person I have referred to in Bakersfield, was not an agent of our company to attend to the loading of the water. They called it the Bakersfield Water Company—or Bakersfield Water Loading Company—I am not positive. I do not know that it is a fact that our company was having the use of practically all of the tank-cars the Santa Fe Company had at that time. I do not know that practically all of the tank-cars were devoted to hauling water for the Pioneer Midway. I don't know that because they must have had more cars. I do not know how many more they had than those that were required for use by our company.

There was considerable traffic on the railroad at that time. I didn't have any particular trouble in getting our freight through. It came through all right.

(By Mr. MORRISON.)

I think this water cost us 6 cents a barrel. I didn't make any payments personally. I just O. K.'ed the bills and sent [605] them in to the office. It cost us 6 cents a barrel laid down on the tank-cars at Fellows. From those tank-cars we let it flow directly into our storage tanks. We had no difficulty at all in getting all the water we wanted. It was only a question of telephoning for it. At any time that I wanted to get more water I would simply telephone and the cars would be sent out in two days.

(Testimony of T. S. Kingston.)

Once in a while when we were in a hurry we would get it in one day. Once in a while I would get too much water, and I would telephone that *that* I didn't want so much, and then it would slip my memory or something and the next day or two I would be rustling around trying to hurry them up a little. We always seemed to get all the water we needed. All I wanted to get from those people I could get without any trouble. We didn't get sufficient to supply the Mays.

Q. As a matter of fact, you stated that you did supply the Mays first, but that you had to shut them off because you didn't get sufficient water, didn't you? A. No, we couldn't get it to them.

Q. Why couldn't you get it to them?

A. We didn't have an arrangement for the water to run down from our storage down to the lease.

We didn't have this arrangement until afterwards. We didn't get the gas engine until after the Mays had made arrangements with the Brookshire. It was a 2-inch pipe. The quantity of water we required per day was according to how much we would use in the hole. Some days we would use considerable in the hole, three or four hundred barrels, and other days we would use 80 or 90 barrels. We got all the water from the station at Fellows through our pipe-line. We did not haul it down in tank-cars to the lease. [606]

Q. And you had then two cars a day, practically, did you?

A. No, about two and one. And sometimes we

(Testimony of T. S. Kingston.)

would stop altogether for a few days.

I do not know exactly how much water we required on the average. The tank at Fellows was a 500-barrel tank. The railroad was grading in there. The tank was set down in the excavation that was made there for the building of the railroad. We were drilling wells 1 and 2 on the Pioneer Midway property during 1909. The most that we ever had going at one time was two wells. We had these two wells going during the latter part of May, June and July. We rigged up our engine for the water line along in May some time. I think we quit delivering water to the Mays in the first part of May.

Q. That is, when you started drilling two wells you told the Mays that you couldn't any longer supply them with water because you couldn't get the water?

A. Well, I told the Mays when they hooked on that it would just be temporary; that we would give them water to get started with.

Q. As long as you could supply it that you would give them water?

A. Well, there was nothing said about as long as we could supply it. We just made a temporary arrangement so that they could get started.

That water-line was a 2-inch pipe-line. Until we coupled this water-line up with the gas engine sometimes we could get enough water for one well and sometimes we couldn't. After we got the water started through the line and could keep water up in the upper end of the line. We never got out of

(Testimony of T. S. Kingston.)

line, it would run down four or five hundred barrels a day. Sometimes we [607] got out of water at the upper end of the line. We never got out of water at the lower end of the line. We always kept that tank—well, we tried to keep that tank full. Of course sometimes we would use out more than usual and use down on this 1,000-barrel storage. Sometimes we would have more than half of that used up.

Q. And that despite the fact that you got one or two carloads every day and could telephone for it any time?

A. Well, it would be at the time that we were filling up, and I would telephone in to stop the shipping for a few days, and then there might be a delay of a day before the shipments would start again, and then the water would begin to get pretty low.

Q. Now, you would keep this 1,000-barrel tank more or less full, and when you got it about full you would tell them to stop the shipments?

A. No, we had another tank there at the railroad track of 500 barrels. When we got all of them full we would stop.

The quantity of water we would use would be according to how much we would use in the hole. If we didn't have to use any in the hole 200 barrels would supply the two wells. If we didn't have to use water in the hole it would take about 200 barrels a day, or 100 barrels a day for each well. If the sand was bad in the hole we might have to pour in a great amount. I have known the boys to use 400 barrels in a day in a hole on that property. I would not

(Testimony of T. S. Kingston.)

consider it safe to run two strings of tools unless I had arrangements to meet emergencies such as that. There would be danger of your hole caving in and of losing your hole or your casing if you didn't have sufficient water. All the different things could happen if you didn't have water that would cause great expense and the loss of a great deal of money. As a matter of fact, water is one of the most important things to acquire in [608] all operations. As a good driller, I certainly would hesitate to go ahead unless I was pretty sure of my supply.

The Mays go their water from our pipe-line in this way— We had a tank on the Southwest corner of Section 30. We had a pipe-line there, *then* they had connected onto our pipe-line. They didn't connect with our pipe-line before it reached us. We didn't allow them to connect into our tanks. I made them connect onto our pipe-line outside of the tank that was running to our well, so that I could close them off at any time without emptying our tank. This pipe-line ran direct from Fellows to our tank, and from the tank I had a line running direct to our wells. The Mays connected with the line running from our tank to the wells, and the water flowed by gravity from that line down through their pipe to their property. I don't remember the size of their pipe-line. I spoke of Mr. Young in connection with the Bakersfield Loading Company or Loading Water Company. I did not mention him in connection with the West Side or the Western Water Company. I think the loading racks of the Bakersfield Company were on

(Testimony of T. S. Kingston.)

the Santa Fe property in Bakersfield, but I couldn't say where they were. I never went down there to see where the cars were loaded.

Redirect Examination.

(By Mr. HALL.)

There were other companies that shipped water out there to drill with in 1909. The Hawaiian shipped water out. Then there was a company down at the end of the Y that got water there, I don't know who they were; it seems to me it was the Cleveland Oil Company. I quit that particular locality about August 1st, 1909. There was no delay in the receipt of water prior to the time I left there in 1909. There seemed to be quite a lot of [609] congestion of freight, that is lumber and pipe and stuff like that.

Recross-examination.

(By Mr. MORRISON.)

There was a lot of freight and stuff being hauled in there on the railroad in 1909. There were a lot of derricks, etc., being brought in. I testified that there was quite a congestion of the lumber, but that I had no difficulty in getting our water. So far as I was concerned, there were no difficulties in getting water.

Thereupon under stipulation of counsel, the testimony of J. J. McCLIMANS given in the suits of *United States v. Brookshire Oil Company et als.*, Nos. A.-34, A.-35, and A.-36, in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of J. J. McClimans, for Plaintiff (In Rebuttal).

J. J. McCLIMANS, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

My name is J. J. McClimans. I reside at Fellows, Kern County, California. I am superintendent of an oil property. I have been engaged in working in and about the oil fields of California since 1900. I have only worked between Fellows and Taft. In 1909 I was working on Section 32 in McKittrick, for the Olig Crude Oil Company. I commenced working for that company on January 20, 1909, on Section 32, Township 31 South, Range 23 East. I don't remember the exact date we started to spud in, but we started [610] in doing a little rigging up on the 20th of January. I think it was along about the 1st of February when we spudded in. We got our water for drilling that well through a water line from the Stratton Water Company. The line was owned by the Olig Crude Oil Company, the California Midway, and I believe the Cleveland Oil Company. The Cleveland, the California Midway No. 1 and the Olig Crude No. 1 wells were supposed to get water out of that line from the Stratton Water Company during 1909. I don't remember when the Cleveland well No. 1 started. It was over on Section 4, in Township 31, Range 23. Cleveland No. 1 was drilling during

(Testimony of J. J. McClimans.)

part of the time I was drilling Olig Crude well No. 1. I can't give you any idea when Cleveland No. 1 started drilling. I finished Olig Crude No. 1 in September, 1910. It was not finished as a producing oil well until December, 1910. I don't remember exactly how long we drilled on it during the year 1909, but we drilled continuously. I believe we drilled continuously with the exception of when we moved the rig. We moved the rig three times on that well. California Midway No. 1 was the other well that was drilling there that year. I think it commenced about the 10th of January, 1909. All three wells, the California Midway No. 1, the Olig Crude No. 1, and the Cleveland No. 1 were drilling simultaneously in 1909. They were all getting water out of the Stratton Water Company line. In 1909 we had some little trouble in getting water to drill Olig Crude No. 1, but we never ran out. Our drilling on Olig Crude No. 1 during 1909 was never stopped because of lack of a supply of water. I did not know of the California Midway or Cleveland No. 1 being stopped in 1909 because of lack of water. I knew they were working on Sunset Monarch well No. 1 up in Section 20. They started some time in the summer of 1909. They got water from the Stratton Water Company. They started to get water through this [611] same line that we had. That is where we had trouble, so they laid a line direct from the Stratton Water Company and connected onto the California Midway No. 1. The water-line that came up from the Stratton Water

(Testimony of J. J. McClimans.)

Company and supplied California Midway No. 1, Olig Crude No. 1, and Cleveland No. 1 was a 2-inch line. I do not know exactly when wells Nos. 2 and 3 of the California Midway were drilled on the East half of Section 32. I know they were drilling or working on them in 1910. I wouldn't be certain that they were in 1909. I did not do any work on California Midway wells Nos. 2 and 3. I did not particularly observe them drilling there and know of what was going on. I never heard during that time of any stoppage on account of supply of water. At that time the California Midway got its water from the same course through the line that went up to Olig crude No. 1. I knew about the Canadian Pacific well No. 1 on Section 4, in the township below. It was started some time in 1909; I don't know exactly. I believe it got its water from the Stratton Water Company. I think they were connected onto our line. I did not hear that the Canadian Pacific had any trouble on account of lack of water in 1909.

The Sunset Western Railroad ran out through that vicinity in 1909. It was extended by the middle of the summer to Fellows. I think it was into Fellows in the latter part of 1908. I said that we had trouble with the Sunset Monarch about getting water for their well No. 1 and they put in another line. This trouble might have been due to a lack of water at the source or to the size of the pipe. If the pressure of water had been on the line all the time there probably would have been plenty enough for all of us to drill up there. I did not hear of any trouble that

(Testimony of J. J. McClimans.)

the Sunset Monarch had after they constructed their own line. I don't remember when the Sunset Western Railroad was extended to Shale. [612] It now runs up to the town of Shale in Section 25. The drillers and tool-dressers usually do the work of rigging up a well preparatory to spudding in. It requires a crew of four men for a standing rig.

Cross-examination.

(By Mr. MORRISON.)

I first became acquainted with this field in 1900. I remained there until 1902 and then I left and came back in 1903, and was there continuously. I believe the California Midway No. 1 started drilling on January 10. I don't remember when they finished drilling. I believe they were drilling on that well over a year. I was there when it was completed. I don't remember the date of its completion. I think that well was completed along some time in the spring of 1910. I don't know when Cleveland No. 1 was started, nor when it was completed. Olig Crude well No. 1 was started in January, 1909, and was completed in December, 1910. We completed it into the oil sand in September and then we got a gusher there and we had to finish with a rotary with a small pipe. I don't remember just exactly the depth to which California Midway No. 1 was drilled, but I think it was along about 2,900 feet. I don't know how deep Cleveland No. 1 was drilled. Olig Crude No. 1 was 2,814 feet deep when completed. I don't know when the Sunset Monarch well was started nor when it was completed. I think it was some time in 1909. I fix that year on account of it

(Testimony of J. J. McClimans.)

being connected onto our well. I am not certain whether it was in 1909 or 1910. I can not tell you when the Canadian-Pacific well was started nor when it was completed.

During the year 1909 I had charge of the McKittrick property—the Olig Crude in McKittrick. That was where we started in in 1900. In 1909 I had charge of that property and the Midway [613] on Section 32. I devoted my time between the two places. I lived in McKittrick at that time and spent the most of my time in 1909 and 1910 on Section 32. It kept me pretty busy. Of all the wells that I have mentioned in the Midway field, Olig Crude No. 1 was the only one that I had anything to do with at all. We first struck oil in that well at a depth of 2,757 feet. We moved the rig three times in drilling that well on account of bad holes. We lost our pipe and one thing and another. Sand and boulders that we encountered at the top of the hole down to a thousand feet—or nine hundred feet, was the cause of losing those holes. We lost two holes completely before we started the third. There might have been a way to prevent the loss of those holes. If I had known the conditions at that time as I know them now I might have been able to prevent it. I will tell you how I did prevent it. I threw away the stovepipe casing and used heavy pipe and had no trouble after that. After I ascertained the kind and character of the territory, drilling on the next well was comparatively easy. I had a good deal of trouble until I found out how to cure it, with the sands and boulders

(Testimony of J. J. McClimans.)

and so forth. The first hole on Olig Crude No. 1 was lost at 1800 feet. The second hole was lost along about the same place, between 700 and 800–850. The third hole I completed. We were working on the first hole about three months before I lost it. I think we spent two or three months on the two holes—most of the summer. We were about six months on the two holes from the time we commenced until we started our third hole, I believe. It took 60 days to get the third hole down beyond the point where I had trouble in the two other holes. I spent something over six months in experimenting, and then I was able to do the same thing in sixty days without any loss. The loss was caused by caving of the sands or the shifting of the boulders. We endeavored [614] to prevent the caving of the hole by quitting the use of the stovepipe casing and using heavy screw-pipe. The sands and boulders were unable to smash this pipe in. We used mud and water for holding back a sand that is shifting in character—quicksand or such as we encountered there. Sometimes water will hold it back. If you have sufficient weight of mud and water you can check that. If we had not had a water supply we couldn't have been able to get a well down at all.

Q. If you started a well and got it down in this sort of territory and your water then failed what would be the effect upon the hole?

A. Well, I don't know, because I have had no experience of that kind.

In the drilling that I have done I have never had

(Testimony of J. J. McClimans.)

to wait for water. My operations during those years were confined to this particular property and this particular well. I found the stratification more or less uniform in the three holes that I started. The first two holes were 20 feet apart. The third hole was 100 feet away. The stratification remained more or less uniform. I encountered a water stratum on the way down. We didn't get any water in the first two holes at all. We didn't reach the water until we got down 940 feet. I am familiar with the Brookshire well No. 1. I do not know exactly when that well was started. I don't remember whether it was started before or after the wells to which I have referred, but I think it was before or along about that time any way. You have stated that certain of the witnesses have testified that the Brookshire well was started April 18, 1909, but I couldn't say exactly. I have just traveled back and forth there and I know they were working on it at that time. I got our water from a water line of our own, which was sold to us [615] by Wilson, Wheat and McLeod. I think it was possibly what they called the Western Crude Oil Company. I didn't get water through the Brookshire line at all. I made arrangements for water prior to starting work there. I did not make any negotiations myself with the Stratton Water Company. We made our arrangements with Mr. McLeod. I think the arrangements for water were made in the latter part of December, 1908, when we took it over. I believe we took the property over in the latter part of 1908 or

(Testimony of J. J. McClimans.)

early part of 1909. The rig was built when we took it over. We acquired the property from Wilson, Wheat and McLeod, and at that time they had this water line there and had arranged with the Stratton Water Company for water through that line. The line was built in 1908. I do not know at what time in the year it was built. It was there when we came there, and we came there some time in December, 1908. I know where the source of supply of the Stratton Water Company was. We were nearer the source of supply than the Brookshire property in Section 24. We are about three or four miles nearer to the source of supply of the Stratton Water Company. I don't know that all of the water from the Stratton Water Company came from the same pump. We had no pump. We were connected onto a tank of the Stratton Water Company. I never was on the Brookshire property with the exception of traveling through there on the county road. I believe I stopped there once or twice at the time we were working on No. 1 on the California Midway. They were right close by. We were neighbors. I was never at Cleveland No. 1 or Sunset Monarch No. 1, or Canadian Pacific No. 1. I know nothing about the difficulties those three wells may have encountered with respect to their water supply. The only thing I can testify about is the condition in our own wells, and what I have said about the other wells is merely my impression. I believe the Sunset Monarch is on [616] Section 20. I don't know, as a matter of fact, that the Sunset Monarch lost its first

(Testimony of J. J. McClimans.)

string of casing by reason of a failure in its water supply. I never heard anything to that effect. I know they had trouble but I don't know what it was over. I supposed it was something like my own. I knew that they did have trouble. I am not certain whether the Sunset Monarch Company is the Spreckels Company or not. I don't know as a matter of fact that the Sunset Monarch was shut down part of the time. I don't know anything about the Californai Midway being shut down part of the time. California Midway worked continuously, I believe, on their No. 1 well.

Redirect Examination.

(By Mr. HALL.)

The supply of water came down from the Stratton Water well on Section 7, down to our Southwest corner of Section 32, by gravity alone.

Thereupon, under stipulation of counsel, the testimony of A. I. BURNS given in the suits of United States v. Brookshire Oil Company et als., Nos. A.-34, A.-35 and A.-36 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of A. I. Burns, for Plaintiff (In Rebuttal).

A. I. BURNS, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

In the year 1909 I was working in the North Mid-

(Testimony of A. I. Burns.)

way field, in Section 14, 31-22, for the Bear Creek Oil Company. They were drilling well No. 1 on the Southwest quarter of the section. [617] The well was spudded in about July 1, 1909. We got our water supply from the Stratton Water Company, but connected on to the Brookshire pipe-line near their No. 1 well. We had no trouble from lack of water from the day the well was spudded in until it was a finished producing well.

Cross-examination.

(By Mr. KAETZEL.)

We didn't have much trouble drilling that well to 1,200 feet. Later it fell off in production and the well was deepened. We were shut down once for casing on the start. We decided to put in a larger casing and pulled out the first one and shut down waiting to get the other casing. We were shut down once for drilling tools. The first time for about 10 days and the next time for about 1½ days.

Thereupon, under stipulation of counsel, the testimony of A. O. TABOR given in the suit of United States v. Consolidated Mutual Oil Company et als., No. A.-41 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of A. O. Tabor, for Plaintiff (In Rebuttal).

A. O. TABOR, a witness called on behalf of the plaintiff, in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I was employed on the Cleveland well in the North-east quarter of Section 4 in March, 1909, for the France Oil Company. I started No. 1 well on that property. We had a storage tank. Our supply came from the Stratton Water Company. I was employed there from March to December, 1909. We were working on the well except when we were waiting for a casing and mud. We shipped a carload of mud [618] from near Los Angeles. The well was not completed when I left in December. We had no cessation of work from lack of water that I recall. The water in the tank would get down to 3 feet from the bottom. We never lost a casing that I recall from lack of water. During the time I was employed by the California Midway Oil Company in the early part of April, 1910, we had to quit because of lack of supply of water. Mr. Stearns, the superintendent, went to Bakersfield and made arrangements with the railroad company for water to be shipped out there in cars. Thereafter we got our supply in cars and not from the Stratton Water Company. This supply was run first into a tank at No. 1 and then piped to tank No. 2.

(Testimony of A. O. Tabor.)

Cross-examination.

(By Mr. LAWLER.)

When Mr. Stearns instructed us to cease drilling and conserve water the supply had gotten to a point where there was some danger of even running out of enough water for the boiler. I knew nothing about the water situation before that. The pressure was low on account of not enough fall from No. 1, but I didn't go over to observe the pressure in the main line. There were times when the Stratton Water Company was short of water.

Thereupon, under stipulation of counsel, the testimony of JAMES BICKMORE given in the suit of United States v. Consolidated Mutual Oil Co. et als., No. A.-41 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of James Bickmore, for Plaintiff (In Rebuttal).

JAMES BICKMORE, a witness called on behalf of plaintiff, in rebuttal, having been first duly sworn, testified as follows: [619]

Direct Examination.

(By Mr. HALL.)

I was employed as a driller for the California Midway on well No. 1, on Section 32 in October, 1909. I worked on well No. 1 until January or February, 1910. Our source of water supply was the Stratton Water Company. We had a fifteen hundred barrel

(Testimony of James Bickmore.)

storage tank when I went there. There was no shortage of water while I was drilling No. 1, nor cessation of work due to shortage of water. We had a small tank, 15 barrels, at No. 2. There was never any shortage of water at No. 2. I commenced work on No. 2 in February, and remained there until April 1, 1910. The Stratton Water Company was the source of supply of that well. When I came back in June there was a change and they had water shipped in from Bakersfield. From June, 1910, to January, 1911, No. 2 was connected with the storage tank at No. 1. We were shut down in July 1910, because of lack of water supply. That was after the Stratton Water supply was cut off and we were using from the tank car supply, we lost no string of pipe by the shut down.

Cross-examination.

(By Mr. LAWLER.)

I don't know anything about the controversies the superintendent had about water. I heard talk of it. My duties were not connected with that. Beyond the water at No. 1 I don't know anything about it.

[620]

Thereupon under stipulation of counsel the testimony of PAUL FOX, given in the suit of United States v. North American Oil Consolidated, et als., No. A.-48 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of Paul Fox, for Plaintiff (In Rebuttal).

PAUL FOX, a witness called on behalf of the plaintiff in rebuttal, having been first duly sworn, testified as follows:

Direct Examination.

(By Mr. HALL.)

I was a director of the Fox Oil Company and operating in the Midway field in 1909. We commenced drilling operations on Section 15, 31-23, November 26, 1909. We acquired water from the Santa Fe Railroad or the Santa Fe water-line. The water came from the Santa Maria springs back of McKittrick. We used this water supply until we finished the well on Section 15 January 25, 1910.

Cross-examination.

(By Mr. WHEELER.)

We struck tar sand at 500 feet and completed drilling at 1,000 feet. The well was on a slope. Negotiations for water were conducted by S. A. Johnson. We were about the thirty-first on the list of the Santa Fe and through the courtesies shown by Mr. Johnson to the Santa Fe we were moved up to third on the list.

Redirect Examination.

(By Mr. HALL.)

So far as I know our use of water was not limited to domestic purposes, but I didn't carry on the negotiations with the Santa Fe.

(Testimony of Paul Fox.)

Recross-examination.

(By Mr. WHEELER.)

When the Santa Fe was short of water they shut us off. The [621] idea was we were allowed to have some of the surplus if the Santa Fe had plenty.

Thereupon, under stipulation of counsel, the testimony of EDWIN HALL WARNER, given in the suit of United States v. Thirty-two Oil Company et als., No. A.-38 in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of Edwin Hall Warner, for Plaintiff.

EDWIN HALL WARNER, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

I am a civil engineer and as such examined the matter of water supply in certain portions of the Midway oil field in 1909. The investigation was made January 5 and 6, 1909. There was a small water supply having its source in what is called the Stratton wells. The railroad was bringing in tank-cars and water from the Kern River. These were the two sources of supply at that time. I have had 22 years' experience as a civil engineer, water supply and hydraulic engineering entering into my experience. From my investigation I found that the water from the Stratton well and the Kern River were absolutely inadequate to supply the district. I made an estimate of the amount necessary to furnish the district. I also looked into the matter of another

(Testimony of Edwin Hall Warner.)

source from which water might be available and located a place for pumping plant from which to supply the district. Buena Vista Lake was one. I found a flowing water well on Section 7, Township 32 South, Range 25 East. The diameter of this flowing well was 4 inches. This well in Section 7 which I have just mentioned was about 18 miles from the Stratton water wells on Section 7 in Township 32, Range 23. [622] There was no other source except Maricopa. I paid no attention to the ownership of the land in the investigation. I was interested simply in examining the supply and reporting on the water situation and what it would cost to correct the conditions.

Cross-examination.

I have been referring to the 4-inch water well on Section 7 in Township 32 South, Range 25 East. I did not make any examination of that well, simply tasted the water and photographed the well. The idea of that photograph was to show that this was an artesian belt. As you will note on the map which is a part of my report, there is in Section 6, one township to the east, an 8-inch flowing well; and also immediately south of it there is a 4-inch flowing well; and on Section 12 there is a 4-inch flowing water well. There is an artesian belt all through there. The water is about 100 feet or more deep. Nobody knows the extent of that artesian belt. It does not come from Buena Vista Lake. It is not leakage from Buena Vista Lake. It is natural artesian water. It is good water, good for domestic purposes and boiler

(Testimony of Edwin Hall Warner.)

purposes. In January, 1909, this artesian belt was developed by a 4-inch well, a 6-inch well, another 4-inch well. That would be at least 14 inches of water naturally flowing there. There was also a very large reservoir in Buena Vista Lake. Buena Vista Lake was nearer to the fields than those Midway wells. It was good water. These water wells which I have just mentioned were 12 or 14 miles from the Midway oil fields. There was no question of the abundance of the artesian water and the water in Buena Vista Lake. The only question was getting it there on the ground. These flowing wells were within one-eighth of a mile from the Sunset Western Railroad. I do not recall having made any investigation of the Chanslor-Canfield or the Santa Fe water supply. If there was such [623] a line in the field I would probably have referred to it in my report. I did not know that they were bringing water down from the wells at McKittrick into the Midway field at that time. I think their line must have come into there subsequently to my investigation because the Santa Fe was bringing in water in tank-cars from the Kern River. The Santa Fe, or Chanslor-Canfield, water-line which you have mentioned is absolutely new to me. I did not know they had a water line down there in 1909. I made no investigation of the water wells at McKittrick. I had heard nothing about them at that time. The artesian belt I have spoken about is described in United States Geological Survey Water Supply Paper No. 222 for the year 1908. I have a copy of this report in my library. It is available to

(Testimony of Edwin Hall Warner.)

the public. You can get them for 5 cents a piece. It is a report which is available for all engineers, as are all Government publications on the matter of water supply and hydraulic elements generally. The Government furnishes us an immense amount of very valuable information which I commend to the attorneys. If you would go to the public library you would find all this information. Most public libraries keep this.

Thereupon, under stipulation of counsel, the testimony of FRANK SCOTT, given in the suit of United States v. Thirty-Two Oil Company et al., No. A.-38, in the Southern District of California, was read into the record on behalf of the plaintiff and is as follows:

Testimony of Frank Scott, for Plaintiff.

FRANK SCOTT, a witness called on behalf of the plaintiff, having been first duly sworn, testified as follows:

Cross-examination. [624]

(By Mr. LAWLER.)

Q. Do you know whether or not at that time there was sufficient water available there to operate wells Nos. 1 and 2 at the same time?

A. Yes, we always had 1500 barrels storage at No. 1. We had a 1500-barrel tank there, and it was always full. So that that would give us quite a supply of water.

(By Mr. WHITAKER.)

Q. Mr. Scott, do you remember having a conversa-

(Testimony of Frank Scott.)

tion with me shortly after the noon recess?

A. Yes.

Q. At which you stated to me that the trouble was that you people couldn't get enough water to run wells Nos. 1 and 2 at the same time, and that at one time Mr. Jergins, who was the field manager for the California Midway Oil Company, had gone to Mr. Kay, the superintendent of the water company, and had offered him \$10 to get him more water?

A. That was after No. 1 was finished.

Q. Didn't you make the statement that there was not sufficient water, and that the trouble was that you couldn't get enough water to run both wells at one time?

A. That day, yes, until we could get a car out the next day from Bakersfield. That is when we first started to ship water.

Redirect Examination.

(By Mr. HALL.)

That was after California Midway well No. 1 came in and we had our tankage and we were trying to open her up and get her to flow. That didn't have reference to the time when we had this 1500-barrel storage at well No. 1. This 1500-barrel tank at No. 1 was full every four hours, and we had to take that out and use it for [625] storage to save the oil until we got our tankage up. After we had this 1500-barrel storage for water we had plenty of water for wells 1 and 2 both. [626]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL
PRODUCERS AGENCY, GENERAL
PETROLEUM CORPORATION, PRO-
DUCERS TRANSPORTATION COM-
PANY, BRITISH-AMERICAN OIL COM-
PANY, NORTH MIDWAY OIL COM-
PANY, SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON AND
WILLIAM WALKER,

Defendants.

Stipulation in Re Statement of Evidence.

IT IS HEREBY STIPULATED and agreed by
the parties to the above-entitled suit, by and through
their respective solicitors, as follows:

That the inclusion of the foregoing statement of
evidence of testimony of witnesses reproduced in the
exact words of the witnesses by questions and an-
swers, is in accordance with the desires of the parties
hereto;

IT IS FURTHER STIPULATED that this cause

was finally heard and determined by the Honorable Robert S. Bean, United States District Judge for the District of Oregon, sitting by special assignment herein, and whereas said assignment has expired, that the statement of the evidence in the above-entitled cause may be approved and signed by the Honorable Oscar A. Trippet, United States District Judge for the Southern District of California, and the signing and approval of the same by the said Honorable Oscar A. Trippet as such judge, shall have the same force and effect as though [627] said statement of the evidence was signed and approved by the said Honorable Robert S. Bean.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General,

C. D. HAMEL,

Special Assistant to the United States Attorney,
Solicitors for the Plaintiff.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

T. O. TOLAND,

L. W. ANDREWS,

A. V. ANDREWS,

Solicitors for Producers Transportation Company,

British-American Oil Company, North Midway
Oil Company.

IT IS SO ORDERED, Sept. 16, 1919.

TRIPPET,
Judge. [628]

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et al. Stipulation in Re Statement of Evidence. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk.

[Endorsed]: In Equity—No. A.-58. United States of America, Plaintiff, vs. Dominion Oil Company et al., Defendants. Statement of the Evidence to be Incorporated in the Record on Appeal. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [629]

*In the District Court of the United States for the
Southern District of California, Northern Division,
Ninth Circuit.*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL

PRODUCERS AGENCY, GENERAL
PETROLEUM CORPORATION, PRO-
DUCERS TRANSPORTATION COM-
PANY, BRITISH-AMERICAN OIL COM-
PANY, NORTH MIDWAY OIL COM-
PANY, SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON and
WILLIAM WALKER.

Defendants.

Petition for Appeal by the United States of America.

The above-named plaintiff, the United States of America, conceiving itself aggrieved by that certain final decree made and entered in the above-entitled cause dismissing its bill, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons and upon the grounds specified in the assignment of errors which is filed herewith. Said plaintiff prays that this appeal may be allowed and that a transcript of the record, proceedings, and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, in the manner and form prescribed by Rule 75 of the "Rules of Practice for the Courts of Equity of the United States."

Dated this 4th day of June, A. D. 1919.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General, [630]

CHAS. D. HAMEL,

Special Assistant to the United States Attorney,

Solicitors for the Plaintiff.

Service of the above Petition for Appeal by the United States of America is hereby accepted this 30th day of June, A. D. 1919, for and on behalf of the appellees, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitor for Independent Oil Producers Agency, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America, vs. Dominion Oil Company et als. Petition for Appeal by the United States of America.

Filed Jul. 7, 1919. Chas. N. Williams, Clerk. By
Maury Curtis, Deputy Clerk. [631]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,
GENERAL PIPE-LINE COMPANY OF
CALIFORNIA, INDEPENDENT OIL
PRODUCERS AGENCY, GENERAL
PETROLEUM CORPORATION, PRO-
DUCERS TRANSPORTATION COM-
PANY, BRITISH-AMERICAN OIL COM-
PANY, NORTH MIDWAY OIL COM-
PANY, SUSAN ELLIOTT, A. B. PERKEY,
F. J. ELLIOTT, JOHN BARNESON and
WILLIAM WALKER.

Defendants.

Assignment of Errors on Appeal.

Now comes the United States of America, the
plaintiff in the above-entitled cause, and files the fol-
lowing assignment of errors upon which it will rely
upon its prosecution of the appeal prayed for by it

from the decree of dismissal entered in said cause by this Honorable Court:

I.

The Court erred in dismissing the bill of complaint and said cause and in entering its final decree so dismissing said bill and cause.

II.

The Court erred in denying, on January 20, 1919, the plaintiff's petition for rehearing filed in said cause, and in dismissing the bill.

III.

The Court erred in failing and refusing to hold, adjudge and decree that the plaintiff was and is fully entitled to the relief prayed for by it in its said bill of [632] complaint, and in failing and refusing to adjudge and decree that the title to the property described in said bill of complaint was the perfect property of the plaintiff, free and clear of the claims of the defendants, and each and every one of them.

IV.

The Court erred in finding and holding in its opinion filed in said cause as the basis for its said decree that the defendants or any of them were excused from diligently prosecuting their alleged work leading to the discovery of oil prior to and after September 27, 1909, by reason of any alleged difficulty or expense in obtaining water and materials for use in drilling on said land.

V.

The Court erred in holding that the defendants and those under whom they claim were *bona fide* occupants and claimants of the property in question at

the date of the withdrawal of September 27, 1909.

VI.

The Court erred in failing to hold that the locators were not *bona fide* locators and that the location notice was posted in the interest and for the benefit of the defendant, The British-American Oil Company, a corporation, or some one other than said locators, and to enable said corporation or some one other than the locators to acquire more than 20 acres of mineral land in violation of the laws of the United States.

VII.

The Court erred in failing to hold that the location notice was posted without the intent on the part of the persons named thereon, or any other person or persons, to pursue discovery work on the lands embraced therein.

VIII.

The Court erred in failing to hold that the locators did not act in good faith for their own benefit in that they [633] acted without intent to prosecute development work leading to the discovery of oil and that no right could be derived therefrom.

IX.

The Court erred in failing to find that no right could accrue to the claimant for the 160 acres claimed in the tract involved herein for the reason, if for no other reason, that there were eight original locators upon the 160-acre tract who had no valid claim thereto or right therein but transferred and assigned their pretended claims and interests therein to a corporation prior to discovery or any work thereon;

and there was no inception of development work upon or under said 160-acre tract prior to said transfer or prior to the withdrawal order of September 27, 1909, and therefore the right thereto did not exist and was not given by the act of March 2, 1911; or otherwise.

X.

The Court erred in failing to hold that the material placed upon the property in question and the occupancy thereof prior to September 27, 1909, were intended merely to hold the property and prevent its acquisition and development by other persons, instead of with the intent to begin and proceed with development with the diligence required by law, or at all.

XI.

The Court erred in finding that the defendants and those under whom they claim were in the diligent prosecution of work leading to the discovery of oil on said land on and prior to September 27, 1909.

XII.

The Court erred in holding in denying the petition for rehearing: "Nor does the fact that some of the parties who signed the notices (of location) did not know the name [634] of their principal invalidate the notice. They knew that they were not acting for themselves and were making the filings for and on behalf of some other person or persons, and the fact that their principal was undisclosed would not invalidate their action."

XIII.

The Court erred in holding, in denying the peti-

tion of rehearing, in substance and effect, upon the second ground urged by counsel for the plaintiff upon the motion for a rehearing, viz.: "that this location and others made for and on behalf of the syndicate, some two hundred in number, were speculations—and by that I understand counsel to mean that it was not the intention of the parties for whose benefit the locations were made to themselves develop the property, but that they made the locations with the purpose and expectation of selling and disposing of some of them to other parties and profiting thereby. I know of no statutory or other rule that forbids paper locations of this character, and these were but paper locations. They are not such as are recognized by the law of the United States. But the practice seems to have grown up in this country of making such locations and the locator obtaining some rights that were recognized by the community. The courts have recognized their right to sell and dispose of their interest under such locations, and the fact that they made them for that purpose would not, in my judgment, invalidate them."

WHEREFORE, the plaintiff prays that the said decree be revoked and the said District Court directed to grant the relief prayed for in the bill of complaint of the plaintiff herein.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General,

CHAS. D. HAMEL, [635]

Special Assistant to the United States Attorney,

Solicitors for Plaintiff.

Received a copy of the above and foregoing assignment of errors this 30 day of June, A. D. 1919.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitors for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitors for Independent Oil Producers Agency, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et als. Assignment of Errors on Appeal. Filed Jul. 7, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [636]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Defendants.

Order Allowing Appeal.

On motion of Frank Hall, Special Assistant to the Attorney General of the United States, one of the solicitors for the plaintiff, United States of America, and on filing the petition of said plaintiff for an order allowing an appeal, together with an assignment of errors and a prayer for the reversal of the decree dismissing the bill of complaint herein:

IT IS HEREBY ORDERED that an appeal be, and is hereby, allowed to the United States Circuit Court of Appeals for the Ninth Circuit from the decree made and entered in the District Court of the United States for the Southern District of California, Northern Division, dismissing the bill of complaint herein:

IT IS FURTHER ORDERED that a transcript of the record, proceedings, papers and exhibits upon which said decree was made, duly authenticated and certified, be forthwith transmitted [637] to said United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 27th day of June, A. D. 1919.

R. S. BEAN,
District Judge.

Service of the above order allowing appeal is hereby accepted this 30th day of June, A. D. 1919, for and on behalf of the defendants, Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker.

A. L. WEIL,
Solicitor for General Petroleum Company, Bank-
Line Oil Company, General Pipe-Line Company

of California, General Petroleum Corporation,
John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitors for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitors for Independent Oil Producers Agency,
Producers Transportation Company, British-
American Oil Company, North Midway Oil
Company, Susan Elliott, A. B. Perkey and
F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of
the United States for the Southern District of Cali-
fornia, Northern Division, Ninth Circuit. United
States of America vs. Dominion Oil Company
[638] et als. Order Allowing Appeal. Filed Jul.
7, 1919. Chas. N. Williams, Clerk. By Maury
Curtis, Deputy Clerk. [639]

*In the District Court of the United States for the
Southern District of California, Northern Divi-
sion, Ninth Circuit.*

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PE-
TROLEUM COMPANY, BANKLINE OIL
COMPANY, STANDARD OIL COMPANY,

GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Defendants.

Notice of Election by United States as to Printing of Record.

The United States of America having appealed from the decree of said court entered against the plaintiff, to the United States Circuit Court of Appeals for the Ninth Circuit hereby gives notice that it elects to take and file in the said Appellate Court, to be printed under the supervision of its clerk, under its rules, a duly authenticated transcript of such portion of the record as may be duly settled and indicated under Rule 75 of the "Rules of Practice for the Courts of Equity of the United States."

Dated this 30th day of June, A. D. 1919.

HENRY F. MAY,
FRANK HALL,

Special Assistants to the Attorney General,
CHAS. D. HAMEL,

Special Assistant to the United States Attorney,
Solicitors for the Plaintiff.

Received a copy of the above and foregoing notice
this 30th day of June, A. D. 1919. [640]

A. L. WEIL,
Solicitor for General Petroleum Company, Bank-
Line Oil Company, General Pipe-Line Company
of California, General Petroleum Corporation,
John Barneson and William Walker.

J. R. PRINGLE,
Solicitor for Dominion Oil Company.
PILLSBURY, MADISON & SUTRO,
OSCAR SUTRO,

Solicitors for Standard Oil Company.
ANDREWS, TOLAND & ANDREWS,
Solicitors for Independent Oil Producers Agency,
Producers Transportation Company, British-
American Oil Company, North Midway Oil
Company, Susan Elliott, A. B. Perkey and
F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of
the United States for the Southern District of Cali-
fornia, Northern Division, Ninth Circuit. United
States of America vs. Dominion Oil Company et als.
Notice of Election by United States as to Printing
of Record. Filed Jul. 7, 1919. Chas. N. Williams,
Clerk. By Maury Curtis, Deputy Clerk. [641]

In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit.

No. A.-58—IN EQUITY.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON and WILLIAM WALKER,

Defendants.

Praeceptum for Transcript of Record on Appeal by United States of America.

To Charles N. Williams, Clerk of the District Court of the United States, for the Southern District of California, Northern Division:

Please prepare, duly authenticate and transmit to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, for the appeal of the plaintiff, United States of America, to the United

States Circuit Court of Appeals for the Ninth Circuit, from the decree dismissing the bill of complaint in the above-entitled suit entered and filed June 7, 1918, and which became final on January 20, 1919, by the order of the Court denying a rehearing and confirming the decree, a transcript incorporating the following portions of the record herein, excluding the formal and immaterial parts of all exhibits, documents and other papers included therein, in accordance with Equity Rule Seventy-six (76), to wit: [642]

1. Bill of complaint.
2. Answer of General Pipe-Line Company.
3. Answer of General Petroleum Company.
4. Motion to strike and to dismiss of Dominion Oil Company.
5. Motion of North Midway Oil Company and others to dismiss, motion for further and better statement, motion to strike and motion to transfer to law side.
6. Answer of defendants Independent Oil Producers Agency.
7. Order of December 18, 1916, denying various motions of Dominion Oil Company.
8. Answer of Bankline Oil Company.
9. Order of March 24, 1917, allowing filing of amended bill of complaint.
10. Amended bill of complaint filed March 20, 1917.
11. Order of March 29, 1917, setting for hearing plaintiff's application to amend bill.
12. Copy of notice of motion for leave to amend

bill filed April 11, 1917.

13. Order of Court of April 17, 1917.

14. Motion of John Barneson to dismiss, filed April 23, 1917.

15. Disclaimer of General Petroleum Company and Felix Chappellett filed April 26, 1917.

16. Order of April 28, 1917, allowing plaintiff to file amended complaint making John Barneson and William Walker new defendants.

17. Copy of amended bill of complaint filed May 14, 1917, pursuant to order of April 28, 1917.

18. Stipulation of Dominion Oil Company in re motion to strike out, etc., filed May 16, 1917. [643]

19. Answer of John Baneson and William Walker.

20. Order of May 3, 1918, setting cause for final hearing on April 8, 1918, and order directing minutes of December 18, 1916, be amended to show all pending motions then on file denied and setting April 8 for all parties to answer.

21. Order of April 8, 1918, continuing final hearing until April 10, 1918.

22. Order of April 10, 1918, continuing final hearing until April 15, 1918.

23. Order of April 15, 1918, continuing final hearing until April 17, 1918.

24. Order of April 17, 1918, continuing final hearing.

25. Answers of Producers Transportation Company, North Midway Oil Company, and British-American Oil Company filed April 19, 1918.

26. Orders of April 22, 23, 24, 25, and 26 on final hearing.
27. Answer of Dominion Oil Company.
28. Opinion of Judge Bean filed June 7, 1918.
29. Decree signed, filed and entered on June 7, 1918.
30. Plaintiff's petition for rehearing.
31. Order of December 9, 1918, continuing petition for rehearing until January 6, 1919.
32. Order of January 6, 1919, continuing hearing petition for rehearing until January 13, 1919.
33. Order of January 13, 1919, continuing hearing petition for rehearing until January 15, 1919.
34. Order of January 15, 1919, continuing hearing of petition for rehearing until January 20, 1919.
35. Order of January 20, 1919, on petition for rehearing. [644]
36. Order of January 21, 1919, denying petition for rehearing.
37. Copy of Court's memorandum opinion denying plaintiff's petition for rehearing.
38. Statement of the evidence to be incorporated in the record on appeal as finally approved by the Court or the Judge thereof.
39. Petition of the United States of America for its said appeal.
40. Order allowing appeal.
41. Assignments of error on appeal.
42. Citation issued on said appeal, showing service thereof.
43. Notice of election by plaintiff and appellant as to printing of record.

44. This praecipe. (Statement dated Sept. 8, 1919.)

45. Stipulation as to form of record and signing.
Dated at Los Angeles, California, this — day of June, A. D. 1919.

HENRY F. MAY,

FRANK HALL,

Special Assistants to the Attorney General.

CHAS. D. HAMEL,

Special Assistant to the United States Attorney, Solicitors, for the Plaintiff. [645]

Due service upon the defendants of a copy of the foregoing praecipe, on the 30th day of June, 1919, is hereby acknowledged, and the ten days' notice provided in Equity Rule Seventy-five (75) is hereby waived.

A. L. WEIL,

Solicitor for General Petroleum Company, Bankline Oil Company, General Pipe-Line Company of California, General Petroleum Corporation, John Barneson and William Walker.

J. R. PRINGLE,

Solicitor for Dominion Oil Company.

OSCAR SUTRO,

PILLSBURY, MADISON & SUTRO,

Solicitor for Standard Oil Company.

ANDREWS, TOLAND & ANDREWS,

Solicitor for Independent Oil Producers Agency, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey and F. J. Elliott.

[Endorsed]: No. A.-58. In the District Court of the United States for the Southern District of California, Northern Division, Ninth Circuit. United States of America vs. Dominion Oil Company et als. Praeipie for Transcript of Record on Appeal by Plaintiff. Filed Sep. 16, 1919. Chas. N. Williams, Clerk. By Maury Curtis, Deputy Clerk. [646]

In the District Court of the United States in and for the Southern District of California, Northern Division.

IN EQUITY—No. A.-58.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOMINION OIL COMPANY, GENERAL PETROLEUM COMPANY, BANKLINE OIL COMPANY, STANDARD OIL COMPANY, GENERAL PIPE-LINE COMPANY OF CALIFORNIA, INDEPENDENT OIL PRODUCERS AGENCY, GENERAL PETROLEUM CORPORATION, PRODUCERS TRANSPORTATION COMPANY, BRITISH-AMERICAN OIL COMPANY, NORTH MIDWAY OIL COMPANY, SUSAN ELLIOTT, A. B. PERKEY, F. J. ELLIOTT, JOHN BARNESON, and WILLIAM WALKER,

Defendants.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, Chas. N. Williams, Clerk of the District Court of the United States of America, in and for the Southern District of California, do hereby certify the foregoing six hundred forty-six (646) typewritten pages, numbered from 1 to 646, inclusive, to be a full, true and correct copy of all of the pleadings, orders and papers specified in plaintiff's praecipe for transcript on appeal, and that the same together constitute the record on appeal in said cause, as specified in said praecipe, except that said praecipe included an order entered March 24, 1917, allowing filing of amended bill of complaint, amended bill of complaint filed March 20, 1917, and order of Court entered April 17, 1917, which were not found to have been [647] filed or entered in my office, and are therefore not included in said transcript on appeal; said record also includes the original citation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States, in and for the Southern District of California, Southern Division, this 8th day of November, in the year of our Lord, one thousand nine hundred and nineteen and of our Independence the one hundred and forty-fourth.

[Seal] CHAS. N. WILLIAMS,
Clerk of the District Court of the United States of
America, in and for the Southern District of
California. [648]

[Endorsed]: No. 3411. United States Circuit Court of Appeals for the Ninth Circuit. The United States of America, Appellant, vs. Dominion Oil Company, General Petroleum Company, Bankline Oil Company, Standard Oil Company, General Pipe-Line Company of California, Independent Oil Producers Agency, General Petroleum Corporation, Producers Transportation Company, British-American Oil Company, North Midway Oil Company, Susan Elliott, A. B. Perkey, F. J. Elliott, John Barneson and William Walker, Appellees. Transcript of Record. Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed November 12, 1919.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

